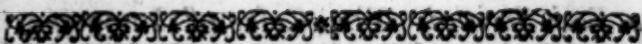


A T T E N T I O N

THE Dilemma of Thomas Gammon, of  
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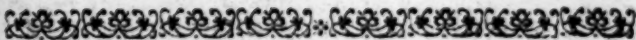
THE

# *Genuine Proceedings*

BETWEEN

The Hon. Mrs. *WELD*,  
and her Husband, in a CAUSE,  
wherein she Libels him for IM-  
POTENCY, in not consum-  
mating his MARRIAGE.

(Price 2 s. 6 d.)



WOMAN'S OWN

# A F F I D A V I T.

*THE Deponent Thomas Gammon, of the Parish of St. Mary White-Chapel, maketh Oath, That the Vouchers inserted in a Book Intituled, The Cases of Impotency and Virginity fully discufsed; Published by Dr. Crawford, relating to the Cause of the Honourable Catherine Elizabeth Weld, alias Aston, viz. 1. The Libel exhibited by her against her Husband. 2. His Answers thereto: With four other Answers of the said Mrs. Weld and her Husband, to Allegations, &c. are true Copies, taken from the Registry of the Arches-Court in Doctor's-Commons, on Stamp-Paper, Sign'd by the Parties themselves, Attested by Dr. Bettsworth, Dr. Strahan, Dr. Andrew, and afterwards examin'd by Mr. Rushworth, Register of the said Court; and delivered to Mr. Barret, Proctor, who was employed to take out the same for the Uses abovementioned.*

Jur' apud Serj' - Inn,  
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THO. GAMMON.



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THE  
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IMPOTENCY *and* VIRGINITY  
Fully Discus'd.

BEING,

The Genuine PROCEEDINGS, in the  
*Archepiscopal Court of Canterbury,*

BETWEEN

The Honourable *Catherine Elizabeth Weld*,  
*alias* ASTON, and her Husband *Edward Weld*,  
Esq; of *Lulworth-Castle* in *Dorsetshire*.

*Published by* JOHN CRAWFURD, L.L.D.,

CONTAINING,

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| <p>I. The LIBEL, at large, exhibited against Mr. <i>Weld</i> for IMPOTENCY after three Years Cohabitation.</p> <p>II. His ANSWERS thereto.</p> <p>III. Four other ANSWERS and RÉPLICATIONS of the PARTIES, to each other's <i>Allegations</i>.</p> <p>IV. Extracts of the DEPOSITIONS and CERTIFICATES on both Sides; and the Reports of the SURGEONS and MIDWIVES appointed to inspect each Party.</p> <p>V. An Account of the Hearing, and Sentence pass'd.</p> | <p>VI. An APPENDIX of <i>Parallel Cases</i>, and other curious PIECES, viz. 1. The Invalidity of an Un-consummated Marriage. Prov'd by Dr. <i>William Fleetwood</i>, late Bishop of <i>Ely</i>. 2. The CASE of the Lady <i>Frances Howard</i> and the Earl of <i>Essex</i>. 3. The famous Decree of Pope INNOCENT III. concerning Divorces for IMPOTENCY. 4. A Collection of Precedents, shewing, what are the real Proofs of IMPOTENCY; That there are no certain Signs of Virginity in WOMEN; and, that all the pretended Ones may be effected by ART.</p> |
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*The SECOND EDITION.*

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L O N D O N:

Printed for THOMAS GAMMON; and Sold by W. MEARS at  
the *Lamb* in the *Old-Bailey*. M.DCC.XXXII.

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# P R E F A C E

**I**T often happens that a Writer who thinks to divert his Readers scandalizes them; and a CAUSE so important as This, for the Dignity of MARRIAGE, which is the Subject of it; for the Credit and Honour of the Families so unfortunately concerned, and from the unaccountable Effects which may flow from it, requires to be treated in a serious Manner, becoming the Reverence of an Ecclesiastical Court, the Quality of the Parties, more especially on the Lady's Side, and even the Respect which is due to public Decency.

I shall therefore assure my Reader, that I will not lay before him any one Voucher but what has received the Stamp of Authority,  
*viz.*

## ii P R E F A C E.

*viz. The Attestation of the Doctor's,  
and Register of the Court wherein  
the Cause was promulgated.*

The Appendix I have subjoined,  
is likewise confirmed by proper Au-  
thorities, and the Contents of the  
respective Articles are sufficient In-  
dications of their Use.

Whatever shall hereafter come to  
my Notice, if this Cause any longer  
subsists, will be faithfully published  
by me,

March 13,  
1734.

JOHN CRAWFURD.



T H E

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# E Registro Almæ Curia Cantuariensis de Arcubus London, Extract.

**I**N Dei Nomine, Amen. Coram vobis venerabili & egregio Viro Johannes Bettessworth, Legum Doctore, Almæ curiæ Cantuariens' de Arcubus London' Officiali Principali legitime constituto; vestrove Surrogato, aut alio Iudice in hoc Parte competente quocunq; Pars Honorabilis & discrete Fæminæ Catherinæ Elizabethæ Weld, alias Aston, Uxoris pretensæ Edvardi Weld de Lulworth-Castle, in Comitatu Dorsettiæ, & Diæces. Bristol, Cantuar' Provinciæ, contra dictum Edvardum Weld, ac contra & adversus quemcunq; alium sive quoscunq; alios coram vobis pro eodem in Iudicio legitime intervenien' per Viam Querel' ac vobis in hac Parte Querelando omnibus melioribus & efficacioribus Via modo & Juris forma necnon ad omnem quemcunq; Juris effectum dicit allegat & in hijs Scriptis in Jure proponit Articulatim prout sequitur. i. e.

**I**N the Name of God, Amen. Before you the Right-Worshipful John Bettessworth, Doctor of Laws, Official-Principal of the Atches Court of Canterbury, lawfully constituted; or to our Surrogate,

rogate, or any other competent Judge in this Behalf : The Part of the Honourable and Discrete Lady *Catherine Elizabeth Weld*, alias *Aston*, pretended Wife of *Edward Weld* of *Lulworth-Castle*, in the County of *Dorset*, in the Diocese of *Bristol*, in the Province of *Canterbury*, against the said *Edward Weld*, and against any other Person or Persons whatsoever, lawfully appearing in Judgment by Way of Grievance, and to you in this Part by Complaining, doth say, alledge, and propound articulately in Law, in these Writings as followeth, viz.

I. *Imprimis*, Quod prefatus *Edvardus Weld*, & prenominata *Catharina Elizabetha Weld*, alias *Aston*, ad quatuor Annos elapsos ab omni Contractu Matrimoniali liberi & immunes, ac in hujusmodi Libertate & Immunitate notorie existentes de Matrimonio inter eos contrahendo & habendo sæpius, seu saltem semel tractarunt & communicaverunt, & ponit pars ista proponens conjunctim divisim & de quolibet.

*Imprimis*, That the afore-mentioned *Edward Weld*, and the before-named *Catherine Elizabeth Weld*, alias *Aston*, were four Years ago from all Matrimonial Contracts free and clear, and being in such a State of Liberty and Freedom, as it was well known of a Marriage between them to be contracted, and had then often, or at least once, treated and communed, *Et ponit*, &c.

II. *Item*, Quod post tractatum & communicationem hujusmodi prefati *Edvardus Weld*, &

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& *Catherina Elizabetha Weld*, alias *Aston*, Matrimonium quemadmodum ipsa *Catharina Elizabetha* tunc existimabat verum purum & legitimum Verba de presenti ad id apta mutuum ipsorum consensum hincinde exprimentes ad invicem de Facto licet de Jure nullitur contraxerunt, posteaq; Matrimonium hujusmodi, quin verus Effigiem Matrimonij, scilicet Vicesimo secundo Die Mensis *Junij*, Anno Domini Millesimo Septingentissimo Vicesimo septimo, per Ministrum, sive Clericum in Sacris Ordinibus, insignit de Facto, etiam solemnizarunt ponit tamen, &c. Et ponit ut supra.

*Item*, That after such Treating and Communing between the said *Edward Weld*, and the said *Catherine Elizabeth Weld*, alias *Aston*, a Form of Matrimony, which the said *Catherine Elizabeth*, at that Time, thought true, pure, and legitimate, in Words of the present Tense, fit for that Purpose, expressing their mutual Consents by Turns, they *de Facto* (tho' Null *de Jure*) contracted, and afterwards the said Matrimony, or more truly, Appearance of Matrimony, was, on the 22d Day of the Month of *June* 1727, by Minister, or Clerk in Holy Orders, performed *de Facto*, and solemnized. *Et ponit*, &c.

III. *Item*, Quod prefatus *Edvardus Weld*, Tempore contractus & solemnizationis Matrimonij hujusmodi pretensi, erat fuit & erat Etatis 22 Annorum & ultra, & in presenti Etatis 25, & ultra; atq; prefata *Catharina Elizabetha Weld*, alias *Aston*, Tempore

contractus & solemnizationis Matrimonij pre-  
tensi predicti, fuit & erat *Ætatis* Juvenilis sci-  
licet *Ætatis* Novemdecim Annorum, sicq; in  
presenti est *Ætatis* ad Generationem apta,  
scilicet *Ætatis* 22 Annorum, atq; Tempore  
predicto fuit, & erat, sicq; in presenti est ha-  
bilis apta & idonea ad procreand' liberos  
proq; tali ac ut talis fuit & est commiter dicta  
tenta habita & reputata. Et ponit ut supra.

*Item*, That the said *Edward Weld*, at the Time  
of contracting and solemnizing the said pretended  
Marriage, was of the Age of 22 Years, and up-  
wards, and is now of the Age of 25, and up-  
wards; and the said *Catherine Elizabeth Weld*,  
alias *Aston*, at the Time of the contracting and  
solemnizing of the said pretended Marriage, was  
at an Age of Puberty, viz. of Nineteen Years,  
and so at the present is Twenty-two Years old;  
and at that Time was, hath been, and now is  
able, apt, and fit for Generation, and the Procre-  
ation of Children, and for such Conjunction and  
Procreation, was and is taken and thought to be  
able.

IV. *Item*, Quod post contractum & sole-  
mizationem hujusmodi pretenso Matrimonij,  
seu versus Effigiem ejusdem, prefati *Edwar-  
dus Weld*, & *Catharina Elizabetha Weld*, alias  
*Aston*, per tres Annos tanquam, viz. & Uxor  
scilicet apud *Lukworth-Castle*, pred. & apud  
*Standon*, in Comitatu *Hertfordiæ*, ac infra Pa-  
rochiam Sancti *Georgij*, in Comitatu *Middle-  
sexie* cohabitarunt, dictumq; *Edwardus Weld*  
sanus integer atq; in bona Corporis valetu-

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dine constitutus, exceptis postea allegandis, cum eadem *Catharina Elizabetha Weld*, alias *Aston*, in uno & eodem lecto, solus cum sola, nudus cum nuda, per plures Noctes integras decubuit & dormivit, & dedit operam. Et ponit, &c. ad carnalem coitum, & ponit ut supra.

*Item*, That after the contracting and solemnizing of this pretended Marriage, or rather Shew thereof, the said *Edward Weld*, and *Catherine Elizabeth Weld*, alias *Aston*, by the Space of three Years, as Man and Wife, viz. at *Lulworth-Castle*, aforesaid, and at *Standon*, in the County of *Hertford*, and in the Parish of *St. George*, the *Martyr*, in the County of *Middlesex*, cohabited, the said *Edward Weld* in sound and good Health being, except as is afterwards alledged, with the said *Catherine Elizabeth Weld*, alias *Aston*, in one and the same Bed, naked and alone, for the Space of several whole Nights, lay and slept, and gave Opportunity of carnal Conversation. *Et ponit, &c.*

V. *Item*, Quod prefatus *Edwardus Weld*, premissis non obstant' licet dicta *Catharina Elizabetha Weld*, alias *Aston*, ad coeund. habilis esset & idonea coitumq; & amplexum ejus enixe appeteret cum ea tamen non coivit, nec coire potuit ita quod nunquam se invicem cognoverunt. Et ponit ut supra.

*Item*, That the said *Edward Weld*, the Premises notwithstanding, and tho' the said *Catherine Elizabeth Weld*, alias *Aston*, was able and fit for Coition, and the same earnestly desired, yet with  
her



her he did not Converse, nor could not Converse carnally, so that they in *that manner* never knew each other.

VI. *Item*, Quod in rei veritate prefatus *Edvardus Weld*, toto & omni pred. anteaq; & citra fuit & sic in presenti est frigidus naturaliter ad experientiam copulæ carnalis & ad coitum omnino inhabilis & impotens, ac talis qui Fæminam cognoscere, aut debitum conjugale per solvere nunquam potuit, neque poterit, sed naturali & perpetuo Frigiditatis & Impotentia Impedimento laboravit, & laborat & tali quod nulla Medicorum, Arte, vel Ope possit removeri prout per Judicium & Inspectionem Medicorum manifestius liquebit & apparebit. Et ponit ut supra.

*Item*, So that in Truth the said *Edward*, throughout all that whole Space, was and is naturally frigid, and for all carnal Copulation utterly unapt, and impotent; and so in knowing a Woman, or in satisfying the conjugal Rights, never could, nor ever can comply, but under a natural and perpetual Frigidity and Impediment of Impotency, laboured, and still labours in such a manner, as no Medicine, Art, or Remedy can remove, as by the Judgment of Physicians, on Inspection manifestly appears.

VII. That after the said pretended Marriage, and during the Time of the Cohabitation of the said *Edward Weld*, and *Catherine Elizabeth Weld*, alias *Aston*, his pretended Wife, the said *Edward Weld*, being sensible of his natural Impotency and Frigidity, did apply to Physicians and Surgeons,



geons, and particularly to *John Williams*, a Surgeon, for Advice and Relief for and concerning such his Impotency and Frigidity, and the said *John Williams* did advise him to consult Doctor *Mead* for his Assistance therein; and this was and is true. *Et ponit ut supra.*

VIII. *Item*, That the said *Edward Weld* did several Times, during the Time of his Colabitation with the said *Catherine Elizabeth Well*, alias *Aston*, and more particularly, in the Months of *June* and *July*, in the Year 1729, and at several other Times in the said Year, own and confess to the most Noble Duke of *Norfolk*, *Adam Colclough*, Esq; and others, That he had not consummated his Marriage with the said *Catherine Elizabeth Weld*, alias *Aston*, by having the carnal Knowledge of her Body; or expressed himself to the same Effect: And that he had taken Advice of a Surgeon and Doctors, and particularly the Advice of the said *John Williams*, for and concerning such his Frigidity or Impotency, but all that he or they could do to, or give him, would not help him, or signify any thing, or have any Effect upon him; *ex eo quod Penim suum nunquam erigere potuit vel dictam Catharinam Elizabetham Weld, alias Aston, penetrare & cognoscere*; (nor could they cause any valid Erection of his *Penis*, whereby he might be able to penetrate, or have carnal Knowledge of his Wife) altho' within the said Time he did often attempt; and he the said *Edward Weld* did several Times within the said Months of *June* and *July*, in the said Year 1729, and at several other Times in the said Year, express himself to the same Effect, to the said *Adam Colclough*, Esq; and others, *Et ponit ut supra.*

IX. *Item*,

IX. *Item*, That by reason of the Premises, there was and is a publick Report and Fame, that the said *Edward Weld* is frigid, impotent, and insufficient, and not capable of knowing a Woman carnally; and the said *Catherine Elizabeth Weld*, alias *Aston*, being sensible of the natural Impoency and Frigidity of the said *Edward Weld*, doth refuse to live and cohabit with him, and coth now live separate from him. *Et ponit ut supra.*

X. *Item*, Quod prefatus *Edvardus Weld*, fuit ac est de *Lulworth Castle*, in Comitatu *Dorsettae*, Dioces. *Bristol Cantuar'* Provincia ac ratione earum Requisite in hac parte concessarum Juris. hujus Curiae subditus & subjectus, & ponit ut supra.

*Item*, That the said *Edward Weld* was and is of *Lulworth-Castle*, in the County of *Dorset*, in the Diocese of *Bristol*, in the Province of *Canterbury*; and by reason thereof, her Request in this Part is legally in the Jurisdiction of this Court, and ought thereto to be submitted.

XI. *Item*, Quod Premissa omnia & singula fuerunt & sunt vera publica & notoria pariter & manifesta, ac de & super eisdem laborarunt & laborant publica Vox & Fama, unda facta fide de jure in hac parte requisita petit pars ista proponens, Jus & Justitiam sibi & Parti suae fieri & ministrari cum effectu Matrimoniumq; pretensum inter Dominum *Edvardum Weld*, & *Catharinam Elizabetham*

*betham Weld* alias *Afson*, utcumque de facto, solemnizatum nullum & invalidum ab initio fuisse ac esse proque nullo & invalido, pronuntiari & declarari dictumque *Edvardum Weld*, in expensi litis in hac causa factis, & faciendis condemnari.

*Cat. Eliz. Weld,*  
alias *Afson.*

*Gul. Strahan.*

*J. Andrew.*

Exam<sup>t</sup>. *B. Rushworth*, Registrarius.

C

The

*The Personal Answers of Edward Weld, Esq; Party in this Cause, made to a Libel admitted on the Part and Behalf of the said Catherine Elizabeth Weld, as followeth, viz.*

**T**O the First and Second Articles of the said Libel this Respondent answers, and believes the same to be true.

To the Third Article of the said Libel this Respondent answers, that he believes the same to be true.

To the Fourth Article of the said Libel this Respondent answers, That from the time of the Marriage Libellate, this Respondent and his Wife, the Articulate *Catherine Elizabeth*, lived together at the Respondent's Seat, called *Lulworth Castle*, for a Year, or thereabouts, (to wit) 'till in or about the Month of *June*, 1728. excepting for about one Month within the said time; and she being then indisposed in her Health came to *London*, for the Advice and Assistance of Physicians, and never afterwards returned to the Respondent's said Seat, and believes that she then went to the House of her Grandmother, the Lady *Howard*, in *Ormond street*, in the County of *Middlesex*, and continued there, or at the House of her Father, the Lord *Aston*, at *Standon* in the County of *Hertford*, 'till the Month of *October* following, and denies that he the Respondent ever cohabited with her within the said time; and in the said Month of *October*, he the Respondent went to

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her at the House of her said Father, where she the said *Catherine Elizabeth*, and he the Respondent cohabited as Man and Wife for about three Weeks, or a Month, and not longer; and then he the Respondent returned to his Seat before-mentioned, leaving her at her said Father's House, and he the Respondent continued at his said Seat 'till the Month of *February* One Thousand Seven Hundred and Twenty Eight-Nine, and then returned to her at her said Father's Seat, where they then cohabited as Man and Wife for about three Weeks, and not longer, and then left her there, and went home to his said Seat, and continued there till in or about the latter end of *May* following, and then went to her again at *Standon* afore said; and they then cohabited as Man and Wife for about a Week, and not longer, and they then went from *Standon* to her said Grandmother, at her then Dwelling-house in *Red-Lyon Square*, which House he believes to be in the Parish articulate, and they there cohabited as Man and Wife for five or six Weeks, or thereabouts, but not longer; and then the Respondent left her there, and returned home, and staid there 'till *November* following, and then went to her again at her said Father's Seat at *Standon* afore said, where they cohabited as Man and Wife for about three or four Weeks, and not longer, and then left her there, and from that time has not seen her; and this Respondent during all the Nights within the times before-mentioned of his cohabiting with the said *Catherine Elizabeth*, did lie in the same Bed with her, *Nudus cum Nuda & Solus cum Sola* \*, and he the Respondent was in good Health of Body at all the said times, and otherwise

\* Naked and Alone.



this Respondent referring himself to his Answers to the next subsequent Article, does not believe, and denies the said Fourth Article to be true in any Part thereof.

To the Fifth Article of the said Libel this Respondent answers, That he believes that the said *Catherine Elizabeth Weld* was *habilis apta & idonea, &c.*\* as articulate during the time articulate, and saith that he the Respondent did frequently, within the said time, endeavour to have carnal Copulation with her the said *Catherine Elizabeth*, and did once, or twice, carnally know her, (as he verily believes) within the said time; and otherwise this Respondent denies the said Article to be true in any Part thereof.

To the Sixth Article of the said Libel this Respondent answers, and denies the same to be true in any Part thereof.

To the Seventh Article of the said Libel this Respondent being accused of natural Impotency, did consult with one *John Williams*, a Surgeon, who advised the Respondent to apply himself to *Doctor Mead*, but he the Respondent never did advise or consult with the said *Doctor Mead*, or any other Physician, except *Doctor Strother*, concerning the same; and otherwise this Respondent does not believe, but denies the said Article to be true in any Part thereof.

To the Eighth Article of the said Libel this Respondent refers himself to his Answers to the foregoing Seventh Article, and otherwise does not believe, but denies the said Article to be

\* Able, apt, and fit for the Procreation of Children.

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true in any Part thereof, saving that at or about the time articulate, he the Respondent at different times in Discourse with the Duke of Norfolk, and the articulate Mr. Colclough, separately did declare that he had not Consummated his Marriage, except his *thinking and really believing that he had once or twice entered her Body could be called a Consummation, or to that Effect.*

To the Ninth Article of the said Libel this Respondent answers and believes, That the said *Catherine Elizabeth Weld*, from the Twenty Second Day of *June* last past has refused, and does now refuse to cohabit with this Respondent, upon a Pretence of a natural Impotency and Frigidity in him, and otherwise does not believe, but denies the same to be true in any Part thereof.

To the Tenth this Respondent believes the same to be true.

To the Last he answers, That he believes, what he has believed; and denies, what he has denied.

*Edward Weld.*

*Responsa supra scripta capta fuere  
vicefimo quarto die Novembris,  
1730.*

*Per me J. BETTESWORTH.*

*Presente me B. RUSHWORTH, N. P. Regist.*

*Exam<sup>t</sup>. B. RUSHWORTH, Regist.*

*The*

*The Personal Answers of Catherine Elizabeth Weld, Party in this Cause, made to an Allegation admitted on the Behalf of Edward Weld, Esq; as follows, viz.*

**T**O the *First* Article of the said Allegation this Respondent answers, That she believes the same to be true.

To the *Second* Article of the said Allegation this Respondent answers, That she believes the said Article to be true, saving that she had been at *London* and *Standon* but about a Fortnight or three Weeks, and not longer, before the articulate *Edward Weld* came to her.

To the *Third* Article of the said Allegation this Respondent referring herself to her foregoing Answer to the *Second* Article believes the said *Third* Article to be true.

To the *Fourth* Article of the said Allegation this Respondent answers, That on the *Sixteenth* Day of *July*, 1728, and not before, she the Respondent being much indisposed in her bodily Health, came from the Seat or Habitation of the articulate *Edward Weld*, at the Place articulate, to *London*, for the Advice of Physicians, and he the said *Edward Weld* came with her from his said Seat to the City of *Salisbury*; and he the said *Edward* then returned home, and she the Respondent continued at *London*, and in *Staffordshire*, and *Hertfordshire*, 'till the

*Sixth*

*Sixth* Day of *November* following, during all which time she lived separate and apart from the said *Edward Weld*, and they did not live or cohabit together at Bed or Board, within the said time, and otherwise this Respondent denies the said Article to be true in any Part thereof.

To the *Fifth* Article of the said Allegation this Respondent believes that on the *Seventh* Day of *November*, 1728. the said Mr. *Weld* came to the Respondent, at the House of the Lady *Howard*, in *Ormond-street*, and there being no Convenience for his lying there that Night, he went away, and returned to her the next Day, and cohabited with her there at Bed and Board, for four or five Days, and then they went together to *Standon*, and he there staid with her for about three Weeks, during which time they cohabited together at Bed and Board, but denies that he then desired the Respondent to go home with him; and otherwise the Respondent believes the said Article to be true.

To the *Sixth* Article of the said Allegation this Respondent believes that on the *Eighteenth* of *February* articulate, the said Mr. *Weld* came to the Respondent at her Father's House at *Standon* articulate, and continued to live with her there till on or about the *Twentieth* Day of *March* following; and that he then went home to his Seat aforesaid, and continued there till the Month of *May* following, without the Company of the Respondent; and otherwise she denies the said Article to be true in any Part thereof.

To the *Seventh* Article of the said Allegation this Respondent answers, and believes, that  
on

on or about the *Twenty Eighth* Day of *May*, 1729. the said Mr. *Weld* came to the Respondent at her Father's House at *Standon* aforesaid, and there continued with her for about ten Days, and he the said Mr. *Weld*, within the said time, asked the Respondent to go home with him to *Lulworth-Castle* aforesaid, and she the Respondent consented to the same, and thereupon came with him to the House of the Lady *Howard*, in *Ormond-street*, where she the said Lady *Howard* then lived, and they there continued to live together for upwards of seven Weeks, and she the Respondent was in daily Expectation of going with him for all the said Time, and denies that she ever refused to go home with him; and otherwise this Respondent does not believe the said Article to be true in any Part thereof.

To the *Eighth* Article of the said Allegation this Respondent answers, That she the Respondent wrote the Letter articulate on, or about, the *Eighth* Day of *August*, 1728. without the Knowledge of the articulate Mr. *Weld*; and hath been informed, and believes, that his Mother, Brother, and Sister did, upon occasion of the said Letter, remove from his Seat at *Lulworth-Castle* aforesaid, in, or about, the Month of *May*, 1729. and otherwise she does not believe, and denies the said Article to be true in any Part thereof.

To the *Ninth* Article of the said Allegation this Respondent answers, and believes, That in the Month of *July*, 1729. the said Mr. *Weld* went from *London* to his Seat at *Lulworth-Castle* aforesaid; and that he had then some

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Affairs which required him to be there, and that he continued there without the Company and Conversation of the Respondent 'till the Month of *November* following, and that on the *Seventeenth* Day of the said Month, he came to the Respondent at her Father's House at *Standon* aforesaid, and continued to live with the Respondent there 'till the *First* Day of *December* following; and otherwise this Respondent denies the said Article to be true in any Part thereof.

To the *Tenth* Article of the said Allegation this Respondent answers, and believes, That on the *Twentieth* Day of *December*, 1729. the said Mr. *Weld* came to the Respondent at her Father's House before-mentioned, and continued there 'till the *Eighth* Day of *January* following, and that on the *Thirty-first* Day of the said Month of *December*, he told the Respondent, that he intended in two or three Days to go to *Lulworth-Castle*, and asked the Respondent if she would not go with him, whereupon she the Respondent saying, *How do you think my Father will like it?* He replied, *Indeed I don't know.* And he the said Mr. *Weld*, after that time, notwithstanding his continuance there 'till the *Eighth* of *January* following, never mentioned any thing to her about her going with him to *Lulworth-Castle*; and otherwise this Respondent denies the said Article to be true in any Part thereof, saving she believes that the said Mr. *Weld* has not seen the Respondent since the *Eighth* Day of *January* last past.

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To

To the *Eleventh* Article of the said Allegation, and to the Letter therein exhibited, this Respondent believes the said Article and Letter to be true in every Part thereof.

*Catherine Weld.*

*Responsa supra scripta capta fuere  
undecimo Decembris, 1730.*

*Per me J. BETTESWORTH.*

*Presente me B. RUSHWORTH, N. P. Registr.*

*Exam<sup>r</sup>. B. RUSHWORTH, Registr.*

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*The Personal Answers of Edward Weld, Esq; Party in this Cause, made to an Allegation admitted on the Part and Behalf of the said Catherine Elizabeth Weld, the Third Session of Hillary Term, 1730.*

**T**O the *First* Article of the said Allegation this Respondent believes the same to be true, saving he denies that the said *Catherine Elizabeth* went from *Lukworth-Castle* to *London*, at the time articulate, for the Recovery of her Health; and believes that the same was in order to be present at the Marriage of her Uncle, the Honourable *Edward Howard*, Esq; and for no other Intent or Purpose whatsoever.

To the *Second* Article of the said Allegation this Respondent answers, and believes, the same to be true in every Part thereof.

To the *Third* Article of the said Allegation this Respondent answers, that he believes the same to be true in every Part thereof.

*The* To the *Fourth* Article of the said Allegation this Respondent answers, that referring himself to his foregoing Answers to the

*First* Article, he believes the said *Fourth* Article to be true in every Part thereof.

To the *Fifth* and *Sixth* Articles of the said Allegation, and to the Letter N<sup>o</sup> 1. exhibited in the said *Sixth* Article, this Respondent answers, That he believes the said Articles and Letter to be true in every Part thereof.

To the *Seventh* Article of the said Allegation this Respondent answers, That he believes the same to be true in every Part thereof, saving that he the Respondent had Affairs of his own, which required his Presence at *Lukworth-Castle* at the time articulate.

To the *Eighth* and *Ninth* Articles of the said Allegations and to the Five Letters exhibited in the said *Ninth* Article, severally marked N<sup>o</sup> 2, 3, 4, 5, and 6. this Respondent answers, That he believes the said Articles and Letters to be true in every Part thereof.

To the *Tenth* Article of the said Allegation this Respondent answers, That he believes the same to be true in every Part thereof.

To

To the *Eleventh* and *Twelfth* Articles of the said Allegation, and to the Five Letters exhibited in the said *Twelfth* Article, severally marked N<sup>o</sup> 7, 8, 9, 10, and 11. this Respondent answers, That he believes the said Articles and Letters to be true in every Part thereof.

To the *Thirteenth* Article of the said Allegation this Respondent answers, That he the Respondent, at the time articulate, went to the articulate *Catherine Elizabeth*, at the Lord *Aston's*, at *Standon*, and continued with her there the time articulate, within which time he the Respondent proposed to her the said *Catherine Elizabeth* to go with him to *Lukworth-Castle*, and to set out, or begin their Journey in two or three Days after the Respondent's proposing the same, and she then refused to go so soon as he proposed; and the said Lord *Aston*, on the same Day, desired of the Respondent to stay at *Standon* three or four Days longer than the said time proposed, adding, that then they might all of them (meaning his Lordship, the said *Catherine Elizabeth*, and the Respondent) go together to *London*: And farther answers, That on the *Seventh* of *June* articulate, he the Respondent, and the said *Catherine*, went from the said Lord *Aston's* to the House of the Lady *Howard*, in *Ormond-street*, and continued there together at Bed

Bed and Board 'till the *Twenty-ninth* Day of *July* following, and believes that the said *Catherine Elizabeth* was for all the said time in daily Expectation of the Respondent's fixing a time for her going with him to *Lulworth-Castle*, but he the Respondent did not, within the said time, ask, or desire her the said *Catherine Elizabeth* to go with him thither, or fix any time for their Journey, by reason that he the Respondent had, within the said time, mentioned to the said Lord *Aston* his the Respondent's Intention of carrying the said *Catherine Elizabeth* to *Lulworth-Castle*; and he the said Lord *Aston* had refused to permit her to go thither with him; and had told the Respondent, that he the Respondent could not insist upon her going with him thither: And farther saith, that he the Respondent, on the said *Twenty-ninth* Day of *July*, 1729. began his Journey for *Lulworth-Castle*, without her the said *Catherine Elizabeth*, leaving her at the House of the said Lady *Howard*; and otherwise this Respondent does not believe, and denies the said Article to be true in any Part thereof.

To the *Fourteenth* Article of the said Allegation this Respondent answers, That he believes that the said *Catherine Elizabeth* cohabited with the Respondent at the House of the Lady *Howard*, during the time articulated, at his the Respondent's Desire, but does not believe, and denies that she continued there, and

and at the Lord *Aston's*, after the Respondent was gone to *Lukworth-Castle*, until the Respondent's Return to her with the Respondent's Consent, or good liking; and he the Respondent did not return to her 'till the *Seventeenth Day of November, 1729.* and otherwise does not believe, and denies the said Article to be true in any Part thereof.

To the *Fifteenth* and *Sixteenth* Articles of the said Allegation, and to the Seven Letters marked N. 12, 13, 14, 15, 16, 17, and 18. exhibited in the said *Sixteenth* Article, this Respondent referring himself to the Contents of the said Letters answers, That he believes the said Articles and Letters to be true in every Part thereof.

To the *Seventeenth* and *Eighteenth* Articles of the said Allegation, and to the Letter exhibited in the said *Eighteenth* Article this Respondent answers, That he believes the said Article and Letter to be true, saving that he the Respondent, at the time articulate, told the said *Catherine Elizabeth* that he intended to go for *Lukworth-Castle* in a few Days, and she the said *Catherine Elizabeth* then refused to go thither with him, alledging, that she had received ill Usage from the Respondent's Mother, and he the Respondent telling her that she herself had taken care to remove that Objection, by causing his said Mother to remove from the Respondent's

dent's House, she the said *Catherine Elizabeth* then told the Respondent, that the Weather was too bad to take such a long Journey at that time of the Year; and, saying that, he does not believe that she the said *Catherine Elizabeth* did then ask the Respondent, *How he thought her Father would like her taking such a Journey at that time of the Year?*

To the *Nineteenth* Article of the said Allegation this Respondent answers, That he the Respondent, at the time articulate, left the said *Catherine Elizabeth*, at her Father's House articulate, and went from thence to *London*, to the *Lady Howard's*, and continued there for about three or four Days, within which time, he the Respondent told the said *Lady Howard* that he was going to *Lulworth-Castle*, and that he had asked the said *Catherine Elizabeth* to go with him, and that she had refused: And the said *Lady Howard* then said, *perhaps you asked her in such a manner that no body could think you was in earnest*; and thereupon the Respondent replied, that *he never had asked her, nor ever would ask her, in any other manner than what he the Respondent should think was very civil*: And then upon telling the Respondent that *she believed that the Lord Aston had been to advise with Counsel concerning the Respondent's not having Consummated his Marriage*; and advising the Respondent to go



Eliza- to Counsel concerning the same; he the Re-  
 at the spondent told her, that there was no Occa-  
 a long sion to advise with Counsel about it, and that  
 d, sa- many married People had lived together like  
 he the Brother and Sister, and that he the Respon-  
 k the dent did not see any Reason why he the Respon-  
 Father dent, and the said Catherine Elizabeth could  
 t that not do the same: And otherwise this Respon-  
 dent does not believe, and denies the said  
 Article to be true in any Part thereof.

To the *Twentieth* Article of the said Al-  
 id Al- legation, this Respondent referring himself  
 that he to his foregoing Answers to the *Thirteenth*,  
 e, left *seventeenth*, and *Eighteenth* Articles answers,  
 'ather's That he believes the said *Twentieth* Article  
 ence to to be true in every Part thereof.

Days, To the *Twenty-first* Article of the said  
 ent told allegation this Respondent answers, That  
 oing to he believes the same to be true in every Part  
 ked the thereof.

n, and To the *Twenty-second* Article of the said  
 Lady allegation this Respondent answers, That at  
 l her in the time articulate, the said Catherine Eliza-  
 ink you beth, speaking to the Respondent, expressed  
 Respon- these, or the like Words, *My dear, we ought*  
 ed her, to live together after this manner; and the  
 manner Respondent asking her, *why?* she replied,  
 ink was *My dear, you have not Consummated your Mar-*  
 he Re- riage; and the Respondent told her, that he  
 d Aston- and she then saying, *you have not*; he  
 ning the- again told her, that *he had*; adding these,  
 his Mar-  
 nt to go  
 to

or the like Words; *My dear, if it appears, after living together our three Years, (meaning three Years from the time of their Marriage) that I have not, we must e'en part Bed, for we cannot in Conscience lie any longer together:* And otherwise this Respondent does not believe, and denies the said Article to be true in any Part thereof.

Catherine Weld.

*Responsa supra scripta capta fuere  
decimo Februarij, 1730.*

*Per me J. BETTESWORTH.*

*Presente me B. RUSHWORTH, N. P. Regist.*

*Exam<sup>t</sup>. B. RUSHWORTH, Regist.*

*The Personal Answers of Catherine Elizabeth Weld, alias Aston, Party in this Cause, made to an Allegation admitted on the Part and Behalf of Edward Weld, Esq; on the 14th Day of July, 1731. as follows, viz.*

**T**O the First Article of the said Allegation this Respondent answers, That she believes the said Edward Weld to be Twenty-six Years of Age, but does not believe that he has all the Parts of his Body, (which constitute a Man, perfect and entire, and which

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Nature has formed and designed for the Propagation of his Species, or the Act of Carnal Copulation,) in full and just Proportion, or that he was, or is, capable of carnally knowing this Respondent, or any other Woman, by reason that he has not Consummated his Marriage with her the Respondent; and otherwise she denies the said Article to be true in any Part thereof.

To the Second Article of the said Allegation this Respondent answers, That she does not believe, but denies the same to be true in any Part thereof.

To the Last she answers, That she believes what she hath believed, and denies what she hath denied.

Catherine Weld.

*Responsa supra scripta capta fuere  
vicesimo quarto die Novembris,  
1731.*

*Per me* J. BETTESWORTH.

*Presente me* B. RUSHWORTH, N. P. Regist.

*Exam.* B. RUSHWORTH, Regist.

*The Personal Answers of Catherine Elizabeth Weld, alias Aston, Party in this Cause, made to an Allegation admitted on the Part and Behalf of Edward Weld, Esq; on the third Day of November, 1731. follow, viz.*

**T**O the *First* Article of the said Allegation this Respondent answers, That she *believes* that within the time articulate, the said *Edward Weld* did often endeavour to *Consummate his Marriage* with the Respondent, but *denies* that *he ever Consummated the same*: And otherwise she does not believe, but denies the said Article to be true in any Part thereof.

To the *Second* she answers, That she believes, what she hath believed; and denies what she hath denied.

*Catherine Weld*

*Responsa supra scripta capta fuerunt  
vicesimo die Novembris, Anno  
Domini 1731.*

*Per me* J. BETTESWORTH.

*Presente me* B. RUSHWORTH, N. P. Regist.

*Examt.* B. RUSHWORTH, Regist.

DEPO

DEPOSITIONS in this CAUSE. For  
the LADY, were these following, viz.

## I.

THE Lady HOWARD depofes, That  
ſhe well knows the Defendant *Edward  
Weld*, Eſq; and is acquainted with the Un-  
eafineſſes in his Family, relating to the Mat-  
ter in Queſtion. That ſhe hath ſeen him in  
his Study at Two of the Clock in the Morn-  
ing, and hath ſpoken to him as far as Mo-  
deſty would permit. That he hath owned to  
her Ladyſhip the *Truth of the Charge of In-  
ſufficiency*, at leaſt that he believed him-  
ſelf ſo.

## II.

The Right Honourable the Lord AſTON  
depofes, That his Daughter hath ſeveral  
times complained to him with relation to the  
Matter in Queſtion; and, That the Defen-  
dant, *Edward Weld*, Eſq; hath acknowledged  
the Subſtance of thoſe Complaints to be true.

## III.

His Grace the Duke of *Norfolk* depofes,  
That the ſaid *Edward Weld*, Eſq; hath made  
to him the like Confeſſions of his Inability  
to

to Consummate his Marriage, and the Concern he exprest for the same.

## IV.

*Adam Colclough*, Esq; deposes, to the same Purport as the two foregoing Depositions in General, but more particularly, as to the serious Discourse he, Himself, had with Mr. *Weld* on the Matter in Question.

And, That Mr. *Weld* did express to Him the great Uneasiness and Concern he was under for this, *his Inability*, acknowledging the Charge to be true, and that he had never Consummated his Marriage. Mr. *Weld* likewise declared that, in order to be freed from this grievous Infirmary, he intended to apply himself to Dr. *Mead*. And, That he afterwards told him he had applied to Dr. *Strother*, and by his Advice made farther Application to a Surgeon, who did prescribe some things in order to redress this his Impediment; which, as he, the said Mr. *Weld*, said had in some measure Success, and did strengthen his Member, so as to render him more apt for Coition; yet, the said Mr. *Weld*, could not but acknowledge, that, he had not, as yet, Consummated his Marriage, even after all that had been done to him by the Surgeon, and of which he had expressed such Hopes.



## V.

In another Deposition, *Adam Colclough*, Esq; farther deposes, That Mr. *Weld*, not only, acknowledged to him the Truth of what is contained in the foregoing Deposition, but descended into these Particulars, as to his Incapacity, *viz.* That whenever he attempted to have *Carnal Knowledge of his Wife*, he was seized with a violent Pain across his Belly, which so contracted his Privities, and put him to so great Torture, that he was obliged to desist from such Caresses.

## VI.

A Certificate of Three experienced Midwives declareth, The Honourable *Catherine Elizabeth Weld* to be, *Virgo intacta, A pure and untouched Virgin.* That her Parts of Generation are in such a State as render her capable of *Conjugal Embraces*, no Defect in their Formation, or otherwise, appearing. And, that on their Inspection they are fully convinced, That *it is impossible she can have had any Carnal Conversation with a Man.*

DEPO-

DEPOSITIONS on the Part of the  
Defendant, in this CAUSE, viz.

## I.

MRS. *Weld*, the Mother of *Edward Weld*, Esq; deposes, That the Complainant, her Son's Wife, told her, within the first Year of her Marriage to Mr. *Weld*, *that she believed her self to be with Child by her said Husband the Defendant.* That she, hath been several times present with her said Daughter-in-law, the Complainant in this Cause, when she was very squeamish, disordered and indisposed in such a manner, that she took these Indications to be Signs of Breeding.

## II.

*John Williams*, Surgeon, deposes, That Mr. *Weld* had a Weakness in his *Seminal-Vessels*; but that he had prescribed him some proper Medicaments for the same, by which he apprehends such Impediment is now removed: and he is now firmly of Opinion that Mr. *Weld* is a Man capable and sufficient for Generation.

## III. Mr.

## III.

Mr. Sergeant-Surgeon *Dickins*, and other Surgeons depose, That *Midwives* are not, in their Opinions, competent Judges of a *Woman's Virginity*, because such Judgment depends on a perfect Knowledge of the natural Situation, and Extent of the *Parts* ministering to *Generation*, and a right Idea of the Alterations *therein*, made thereby. \*

*This Cause was determined in the Arches Court of Canterbury at Doctors-Commons (Feb. 13. 1731-2.) when it went in Favour of the Husband, upon the following Particulars, viz.*

IT was deposed by five eminent *Surgeons*, that tho' there had been some *Impediment* in the Husband, yet now by their Skill that *Impediment* was removed; and declared it was impossible for *Midwives* to tell whether the Lady was, *Virgo intacta*, a pure Maid or not.

The Affidavits, Interrogatories, and Certificates relating to the said Cause were se-

\* It may not be improper to consult Monsieur *Dionis's* most curious *Dissertation* on this Subject, which is translated from the *French* Original, and annexed to, *ONANISM displayed*, 12<sup>o</sup>. 1726.

verally read, as were also 19 Letters that had passed between the Gentleman and his Lady. And likewise his Answer to his Wife's *Interrogatory* of his not having had Carnal Knowledge of her for three Years after their Marriage, in which he asserted, that he *believed* he had *such Knowledge* of her twice within the first Year. This Point was learnedly argued by his Counsel, who asserted That to be sufficient to prevent the Marriage being set aside; but this was answered by the opposite Counsel, that if the Gentleman could not swear *positively*, it look'd as if he was not a competent Judge of what was meant by the Words. The whole was merrily harangued on by both Parties, and several smart Repartees, as may be supposed from the Nature of the Subject, passed between the Counsel on both Sides; but the Judge, Dr. *Bettesworth*, gave it as his Opinion, that if the Marriage should be disannulled, and the Parties severally marry again, and the Man should have Children by a Second Wife, that then his Marriage with her must be void, and he must go and live with the first Wife; \* so directed them to live together again.

However, all that can be said against the *Validity* of an unconsummated Marriage is most learnedly and judiciously urged by Bi

\* See, The Decree of *Innocent III.* on this Head. *Appen*  
*dis, N<sup>o</sup> III.*

shop *Fleetwood* in his PLEA, in the Case of Sir *George Downing*, and Mrs. *Forrester*, to which we refer. †

The Argument for the *real* and *pretended* Marks of *Virginity*, is, we hope, also Dilated and Exhausted by the Authorities produced. §

Exactly parallel to this of Mrs. *WELD*, is that well known CASE of the Lady *FRANCIS HOWARD*, 1613. Seven *Midwives* being appointed to make Inspection upon this Lady's Body, did Report that *She* was fit for *Copulation*, and to *bring forth Children*; and that the said Lady was a *Virgin*, and uncorrupted. Upon which there was a *Sentence of Divorce* given for the *Nullity* of the *Marriage*, and both Parties Licensed to be married again. See farther Particulars, relating to the Earl of *Essex* and the Lady *Francis Howard*, in our *Appendix*. N<sup>o</sup> IV. & *seq.*

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## A MEMORIAL of the Nature of CAUSES of this Kind.

THO' Matters of Fact may seem to lie plainly before us, we cannot determine either in behalf of the *Complainant* or *Defendant*, till a thorough Enquiry be made, into the *True Doctrine of the Church* con-

† See *Appendix*, N<sup>o</sup> I.

§ *Appendix*, N<sup>o</sup> II.

cerning MARRIAGE, pursuant to which, and the present Condition of *Ecclesiastical Laws*, will be shewn that *Good* or *Evil CONFIRMATION* is the only *necessary lawful Proof* of *IMPOTENCY*; and that *all other Proofs*, as being either *unlawful* or *uncertain* are to be set aside and rejected.

For, upon the joint System of Religion and Law, this whole Cause turns. The *first* Proof we shall offer is founded, upon *the Spirit of the Church, and the Purity of its Doctrine, viz.*

The *Spirit* or *Mind* of the *Church*, is no other than that of *Jesus Christ*, in the Holy Institution of MARRIAGE; and as the Mind of *Jesus Christ*, in raising Marriage to so great a Dignity by his Presence, was to render it *indissoluble*, the Mind or Intention of his Church is, not to admit, without evident Certainty, any Means that can tend to *dissolve* it, and consequently to reject all Proofs which, in their own Nature, or upon Experience, are found to be uncertain.

In this *Indissolubility* consists the sacred Parallel of the Union between the Husband and Wife; and the Union of *Jesus Christ* with his Church, by his Grace.

The Gospel, which is our Law, teaches us, That before the Time of *Jesus Christ* Divorce



Divorcement was a Way which the *Mosaic* Law had allowed the *Jews*, *ad duritiem cordis, for the Hardness of their Heart*: And it was to put an End to the Abuse of it, that *Jesus Christ* pronounced this contrary Law; *Quod Deus conjunxit, homo non separet; quicumque dimiserit uxorem suam, & aliam duxerit, adulterium committit super eam: Et si uxor dimiserit virum suum, & alium nupserit, moechatur.* What God hath joined together, let no Man put asunder: Whosoever shall put away his Wife, and marry another, committeth Adultery against her: And if a Woman shall put away her Husband, and be married to another, she committeth Adultery, *Mark* x. 9, 11, 12.

For the well understanding of the Consequence and Effect of this *Indissolubility*, according to the Intention of the Church, and the Object of our Cause, we must lay down two Principles which cannot be contested.

The *First*, which both Sides agree to, is, That as what is in its Essence *Indissoluble* cannot be *dissolved*, so there can be no proving that a Marriage is *dissolved*, but by supposing for certain, evidently certain, that the Marriage has not *existed*; that there had been a Celebration, but no *Consummation*. For this Reason it is, that in the Actions which are brought against Marriage, they always conclude in a Declaration of the Nullity. It is  
a *Non-*

a *Non-Existence* rather than *Dissolution* of Marriage ; for had there been a Marriage, not all the Power on Earth, no, nor that of the Church it self, can *dissolve* it.

The *second* Principle, which is a necessary Consequence of the *first*, is, that to shew there has been no Marriage, that a Marriage, tho' solemnized, does not exist, there must be a real, certain, evident Fault, either with respect to the Subject, or with respect to the Form, which did obstruct the Effect. The Church and the Laws have declared certain Impediments which cancel a Marriage, as Want of Age in those who are not arrived to Puberty ; want of Consent, or invalid Consent in the Marriage of young Heirs and Minors ; the Default of a proper Priest, &c. But they admit of none of those Impediments, unless made out by certain, evident, and infallible Proof.

Therefore, if *Impotency* be received as a Cause of *Dissolution* of a Christian Marriage, it neither is, nor can be so, in the Intention of the Church, any farther than as it is founded upon certain and evident Proof ; the *Impotency*, in a Word, must be manifested, and brought to Light ; because the Spirit of the Church does not suffer, that the Dignity of the Ceremony, the Condition of Persons whom it has tied together, should depend upon the Event of a lame, ambiguous, or uncertain Proof ;

Proof; and to admit, for a *Dissolution* of *Marriage*, a doubtful or casual Proof, is to destroy or indanger the *Indissolubility* of the Charge pronounced by *Jesus Christ*.

These Principles pre-supposed, in order to make a discreet Judgment of the said Proofs, as to their Utility or Inutility, their Use or Abuse, let us examine the Discipline of the Church in *two* different Periods of Time.

The *first*, during the twelve first Ages, wherein the Church (at least the *Romish* Church) took no Cognizance of Accusations for *Impotency*.

The *second*, beginning at the 13th Century; since when the Church has, by little and little, admitted such Complaints, and accepted the different Proofs thereof, as shall be hereafter explain'd.

In these two different Periods, tho' the Discipline has vary'd, the Doctrine has ever been the same. Discipline, which is the Work of Men, set over the Church to govern it, is alterable for prudential Reasons, according to the Difference of Circumstances of Time and Place; but the Doctrine, which is deriv'd to the Church from *Jesus Christ*, is as invariable as its Author, and depends neither on Time nor Place; thus *Marriage*, since its Institution by *Jesus Christ*, has always been

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*indissoluble* in the *second* Period as well as in the *first*; it is so still, and ever will be so.

By this Immutability of Doctrine we shall reconcile both Periods, and see that these Changes in Discipline, instead of contradicting our System, will serve to confirm it.

In the *first* Ages, when the Ecclesiastical Discipline, being nearer its Source, was the more pure, there were *Impotents*, as there have been since: What Answer did the Church in those Days give to troublesome Wives, who complain'd of their Husband's *Insufficiency*; or to the Husbands, who accused their Wives thereof? She gave them, for Decision, the Law she had received from *Jesus Christ*, the same Law which *Jesus Christ* had pronounced to the *Jews*; *Quod Deus conjunxit, homo non separet. What God hath joined, let no Man put asunder.* Persuaded of the Danger of the Consequences, she held for a Rule, that the public Welfare of the Church was preferable to the particular Interest of a complaining Wife; and that it was less inconvenient to let alone the Marriage of *one* IMPO-  
TENT, than to expose the Marriages of *many* to the Hazard of a false Accusation, and the Uncertainty of its Proofs. See more on this Head, in our *Appendix* N<sup>o</sup>. II.



# APPENDIX.

NUMB. I.

THE

INVALIDITY

Of an Un-consummated

# MARRIAGE.



APPENDIX

TABLE

CONTENTS





T H E  
C A S E.



**G**EORGE DOWNING,  
*without the Knowledge and  
Consent of his Father (then  
alive, but accounted not of  
sound Judgment) was, at the  
Age of fifteen, An. 1701, by the  
Procurement and Persuasion of those, in whose  
Keeping he was, marry'd, according to the  
Church Form, to MARY FORESTER of the  
Age of Thirteen.*

II. *This young Couple was put to Bed, in  
the Day Time, according to Custom, and  
continued there a little while, but in the  
Presence of the Company, who all testify  
they touch'd not One the Other; and after  
that, they came together no more; the young  
Gentleman going immediately Abroad, the  
young Woman continuing with her Parents.*

III. *GEORGE DOWNING*, after three or four Years Travel, return'd Home to England; and being sollicit'd to live with his lawful Wife, refus'd it, and frequently and publickly declar'd, he never would compleat the Marriage.

IV. Fourteen Years have pass'd since this Marriage Ceremony was perform'd ; and each Party having (as is natural to think) contracted an incurable Aversion to each the other, is very desirous to be set at Liberty; and accordingly Application is made to the Legislative Power, to dissolve this Marriage, and to give each Party Leave, if they think fit, to marry elsewhere.

On Tuesday May 5, 1715, this CASE was brought to a Hearing before the House of Peers, who after a strenuous Debate of near three Hours long, gave their Determination against it, and rejected the Petition ; being only carried by a Majority of two Voices, *Noes 49. Yeas 47.*

*The Reasons against such Dissolution, are,*

*First*, That each Party was consenting to the Marriage, and was old enough to give such Consent, according to the known Laws of the Kingdom; the Male being fifteen Years old, the Female thirteen; whereas the Years of Consent are, by Law, fourteen and twelve.

*Se-*

*Secondly*, They were actually marry'd according to the Form prescribed by the *Church of England*; the Minister pronouncing those solemn Words used by our Saviour, *Those whom God hath joined, let no Man put asunder*. They are therefore Man and Wife both by the Laws of God and of the Land; and since nothing but *Adultery* can dissolve a Marriage, and no *Adultery* is pretended here, the Marriage continues indissoluble.

The following PLEA was drawn up on this Occasion, by Dr. *Fleetwood*, late Bishop of *Ely*, and from hence we hope it will be seen, that something more than *Common Pity*, was due to this *Unfortunate Pair*.

### The PLEA.

My LORDS,

I Intreat you to favour me, whilst I speak a few Words to the *Bill* that is now brought before you, notwithstanding what I hear whisper'd about by the People who stand near me, that this is a Matter proper to the *Clergy*, and that we are to acquiesce in the Judgment and Opinion of my Lords the *Bishops*, who are agreed that such a Marriage as this is not to be dissolv'd. My Lords, the Bishops  
them-

themselves are (under Favour) not agreed upon this Matter, altho' the Majority of the present Ones is, as I hear, against the Dissolution of this Marriage: But, were they all here, and all unanimous in the Point, would that be a binding Argument? I am a little asham'd to hear *Laymen* say, that Cases of this Nature fall not properly under their Cognizance and Consideration, but are to be decided by the Clergy only. There are no such Difficulties in the Case before us, as I apprehend it; it is what we may all of us understand, and, I believe, we most of us do: And to defer and yield entirely to *Authority*, where we are able to hear Reason, and to judge; is a Submission that is no more due, than, I dare say, it is expected by that venerable Bench. I will therefore, with your Lordships Indulgence, speak my Mind in this Matter freely.

I hear it is said, my Lords, that a Marriage which was once good and valid, is for ever after that *indissoluble*, unless in the Case of *Adultery*. I wonder, by the Way, how they came to except *the Case of Adultery*; for tho' our Blessed Saviour has excepted *the Case of Adultery*, yet the Stream of Authority, the Generality of those Great Men, whom we call the *Fathers* of the *Latin Church*, together with  
the

the Rabble of *Schoolmen* and *Commentators*, have almost to a Man, deny'd the innocent Party the Liberty of marrying again, altho' divorc'd from an adulterous Partner; and I would fain know, how much a *Divorce* is worth above Six-pence, without leave to marry again, if the injur'd Party pleases? But I only mention this, to let your Lordships see, whither the Reverence of Authority alone, and great Names, may carry those, who will be led tamely by them, and will not use the Reason and good Sense which God has given them.

I ask your Lordships Pardon for this Digression, and come to the Point. A Marriage, we are told, is good, where the Parties concern'd were at Age and Liberty to consent, and actually consented, and were actually marry'd by the Form prescrib'd in the Book of *Common-Prayer*. And such a Marriage, we are also told, is *indissoluble* by the Law of God. I will not waste the least of your Lordships Time in needless Cavils, but take it for granted, that the Man now concerned was fifteen Years of Age, and the Woman thirteen, which are Years of Consent by the Laws of the Land, and that they were actually marry'd by the prescrib'd Form. But I deny that the Marriage is therefore *indissoluble* by the Legislative Power

Power of the Land, and that for many Reasons.

My Lords, the Years of Consent are not fix'd to fourteen or twelve, either by *Nature, Reason, or any Law of God*; but purely and meerly by the positive Laws of the Land, which may change them to morrow; and if they were chang'd to day, no Man in *England* would, I dare affirm it, be dissatisfy'd; it seems so senseless and unreasonable to give our Children the Power of disposing of their *Persons* for ever, at an Age when we will not let them dispose of five Shillings without Direction and Advice. But I insist not upon that at present; the Law is already made, and I consider it as such; but still it is but a *Human Law*, and the same Power which determines it to bind in the *general*, may, if it seem fitting, determine it not to bind in this, or any such *particular* Case; and that without Offence either to God or Man. The Laws indeed must fix upon a certain Time, or otherwise the Subject will want Direction, and a Rule to go by. And let us take it for granted now, that the Time fix'd by the Laws is a reasonable and fitting Time for ninety nine People in a hundred; yet if the hundredth Person be aggrieved to Death, or worse than Death, by such a Law, what is the Impediment, what the  
 Danger,



Danger, what the Mischief, of declaring the hundredth Person not to be bound by that Law? If it were possible for human Wisdom to foresee all the Inconveniences and Mischiefs that can arise, would not the Legislative Power provide a Remedy for all? Would it not make its Rules as comprehensive as it could, so that they might comprise and take in all Cases and Persons possible? But this we find was never done, nor ever will be done: No Foresight is sufficient for all Accidents : But there is room for After-thought; and a Power to cure the Evils which it could not prevent, because it could not foresee, is lodg'd in every Government. 'Tis to that Power we have now Recourse: We pray Relief against a Law, which however just and fitting it may be thought in itself, and beneficial to others, binds *Us* to nothing but Misery; and truly *kills*, according to the Letter. The Man and Woman were *at Age*, according to the Law, but wanted that Maturity and Forwardness of Age, which the Law supposes and requires in People of twelve and fourteen; when it makes them capable of marrying at those Years. They gave *Consent* indeed with their Tongues, and pronounc'd the solemn Words, by which they mutually deliver'd up themselves each to the other; that is, they did as they were bid to do,

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and

and said just as the Parents and Priest commanded them to say. But where was the Consent of Heart? Where was the Knowledge and Understanding that is requisite to the forming a Resolution of this Nature, and to the making such a solemn Contract? My Lords, the Children were entirely passive in the Matter, and very obedient to the Orders of those that govern'd them; and would have given away their Fortunes and their Liberties, and every Thing they had, had they been bid to do so, in the same Manner. I may affirm, because I have taken great Pains to be inform'd of the Truth, that this young Couple came together to contract, and to consent to Marriage, without so much as the Desire or Appetite of being marry'd; without so much as knowing what it was they were to bargain and contract for: They consented to give the Use and the Dominion of their Bodies each to the other, as long as they both should live, without so much as understanding what they meant when they said so; without so much as an Ability of making good their Promises and Engagements.

This, my Lords, is the *Consent* this Couple of young and thoughtless Creatures gave; and this Consent the Church it seems insists upon. The solemn Promise was pronounc'd in solemn Manner by the Priest,

and

and the Children were bid to *say after him*, and said after him, and then the Knot was ty'd, that nothing can loose but Death. Is there any Thing in the World so like a *Charm* as this ? My Lords, there is not any Contract in the World but may be utterly dissolv'd, by the free Consent of Parties, if without Prejudice to any Third. I like a Horse that is in any Man's Possession, and he likes the Price I offer for it ; we thereupon agree, and pass our Words each to the other : His Promise then gives me a Right to the Horse, and my Promise gives him a Right to the Price agreed upon. But in a little Time we each of us bethink our selves, and each dislikes the Bargain he has made, and each agrees to set the other at his Liberty : I have not us'd your Horse, nor have you gotten my Money. Here the Contract is utterly dissolv'd by the Consent of Parties, and no third Man is hurt thereby. Will any Man say that we have done amiss ? Will any one say that we have so much as broken our Word each to the other ? The Word I gave to him was to secure his Bargain ; the Word he gave to me was to secure mine. If he dislikes the Bargain, he gives me (as it were) my Word again ; and so do I to him, and then we are again at Liberty. My Lords, If we should carry the Mat-

ter farther yet, and to secure the Bargain we seem at first so fond of, should give our *Oath* to each other, in Presence of a great Company, and with what Solemnity besides you will, yet I affirm, (and so do all the *Casuits* in the World, as I am told by those who know) I say, my Lords, that I affirm, that if in this Case, after this solemn Oath, we should both of us freely consent to break this Agreement off, and no Body else be hurt thereby, we should neither of us be guilty of Perjury, or Breach of *Oath*. Our Oaths were given to each the other, to secure the Promises that were made; and if we, each of us see Reason to consent, and freely do consent, to release each other of his Promise, the Oath can lay no farther Obligation on us. I promised, and I swore I would perform that Promise to him; he did the same to me; but neither of us, after some Time, car'd, or requir'd, to have such Promise made good to him; our Oaths must therefore follow the Nature of our Promises; and when the Promise is releas'd, the Oath is so also. It may be we both of us did amiss, in calling God to Witness, (as in an Oath Men are presum'd to) in an Affair of so light Moment; I will not dispute that now, but I maintain that such an Oath obliges not, if the Promise, for whose Security the  
Oath

Oath was given, be mutually releas'd, and no Body hurt thereby. My Lords, I appeal to those who understand these Matters, whether what I say be not true.

Whence is it then, that the *Marriage-Contract* should be *indissoluble*, when all other Contracts, tho' confirm'd with solemn Oaths, may be dissolv'd, if the contracting Persons agree to such a Dissolution, and no third Person suffers by it? How comes a Promise of this Nature to differ from all other Promises whatever? Oh, say the *Papist* Casuists, it is because this same Matrimony is a great *Sacrament*. No, say the *Protestant* Divines with us, it is no Sacrament, but it is the Ordinance of God, instituted in Paradise, in the Time of Man's Innocence, and signifies to us the mystical Union that is betwixt Christ and his Church; and the Promise is made with all Solemnity, in the Presence of God, in the Church, before the Priest and all the Company, and confirm'd with the Words of Christ: And therefore a Consent and Promise made in such a solemn Manner can never be retracted or dissolv'd.

My Lords, I intend not to say one Word against the Dignity of Marriage. But I do not think that the Solemnity of *Words*, of *Place*, and *Company*, in which a Contract is made, adds any Strength or  
Virtue

Virtue to such Contract, or makes it more obliging.

A Man indeed will certainly be more *asham'd* to break a Promise made at Church, and before a great Company, than he will be to break such a Promise made to his Friend alone, at his own House. But is he more oblig'd in Conscience to keep his *publick* Promise than his *private* one? Will any honest Man say that? The Obligation therefore does not arise from the Solemnity of *Words*, and *Place*, and *Company*, but from the free and voluntary Promise which a Man makes, and the Right he thereby gives to another. The Scandal also and Offence that is given and taken by a Breach of Promise, made in solemn Manner, is indeed greater, than is occasion'd by the Breach of a Promise made in private: But the Reason of that is, because more People know of it; for if the same People were assur'd that such a Promise was indeed made, altho' in private, they would as certainly condemn the Breach of it, as they would, had it been made before them all; and they would be as much scandaliz'd at such a Breach, as if they had been Witnesses to the making the Promise: Which is a Proof that a Man's Obligation to keep his Promise arises from *his having freely made it*, and not from his having made it

it



it in such a *Place*, and before such a *Company*, and in such a particular *Form of Words*.

The first Marriage that ever was made, was made without any Words at all, that we know of, expressing their Consent; and it was so *clandestine*, that there was not so much as a mortal Man by, no not a *Priest*, to join them together: But God who made them, brought the Woman to the Man, and instructed them by Reason and natural Principles, that they were made each for the other. There was Consent of Heart, and Union of Affections. But I insist not upon the Example; it is too singular to be a Rule. Years of Age are necessary; and Consent, in express Words, mutually given and taken, is necessary to make a Marriage-Contract good and valid.

This is the Ordinance of God, this is of Divine Appointment, that one Man and one Woman should freely and knowingly give Consent to be each others, to all the Ends and Purposes of Matrimony, as long as they both should live, and should not be allow'd to give themselves to any one's Use besides.

And all that Christ added (if indeed he added any thing, or did any more than revive it) to this Original Institution was, that when either of the Parties brake their Contract by Adultery, the innocent  
Party

Party was at Liberty to separate from the faulty one, and marry another, if it were thought fitting. Since therefore all that is absolutely necessary to the making a Marriage-Contract, is, that a Male and Female, who are at Age, and Liberty to consent, should actually consent to give the Use and Dominion each of their Bodies, to the other; and, exclusive of all others, to live together faithfully till Death parted them: Since this is so, I do affirm, that *Caius* and *Caia*, two *Heathens*, giving their Consent, in the Manner above-mention'd, in their Father's Parlour, are Man and Wife *according to God's Ordinance*; their Marriage is as true, as good, and as innocent a Marriage, in the Sight of God, as the Marriage of a *Jew* and *Jewess*, tho' both in Covenant with God, made before the High-Priest himself, with all the Ceremonies you can imagine, and in what Form of Words you will, before a hundred Witnesses, and at the Altar in the Temple of *Jerusalem*.

I am, my Lords, so satisfy'd of the Truth of what I say, that I go on to say, with all Assurance, that the Marriage-Contract of this *Caius* and *Caia* was as good, as binding, and as innocent as the Marriage-Contract of any Lord in this Assembly, tho' solemniz'd in the Church of *St. Paul's*, according to the establish'd Form  
in

in the *Common-Prayer*, by his Grace my Lord Archbishop of *Canterbury* himself, repeating those most sacred Words of Christ, *Those whom God hath join'd, let no Man put asunder.* And I aver, that God did as surely join *Caius* and *Caia*, when they consented to become Husband and Wife for Life, as he has join'd any Couple else for these seventeen hundred and fifteen Years. So that I hope, my Lords, you will not suffer your Eyes to be dazzled with the Pomp and Glitter of great Words, and awful Sounds, which fly before good Sense, and vanish when you come to look into the Reason of Things.

*Caius* and *Caia* must express their Consent in *Words* and *Signs* appointed by the Laws of their Country; and must be married by the *Persons* set apart for such Service, according to the Rites and Ceremonies of their Religion: So must the *Jewish Pair*, according to theirs; and so must *Christians* also. But there is something common to them all; and that in which they all unite must needs be that which makes the Marriage-Contract valid and obliging. And what is that, but that a Male and Female should be at Age to consent, and at liberty to consent, to give to each the other the Use and Dominion of each other's Body,

dy, exclusively to all the World besides, as long as they both shall live ?

This is properly the Marriage-Contract, and common to all Nations and Religions; and all beyond this, is Matter of Ceremony, Decency and Prudence; and order'd by the Legislative Powers of different Countries, as they see convenient. And I do not so much as pretend to dispute the Force and Obligation of these Laws, to such as are subject to these different Powers: They are, and may, and must be binding as to the Dowries of the Wives, and the Legitimation of Children, and their inheriting Estates and Honours, and in all such like Cases.

My Lords, so much has been said in favour of the Solemnity of *Words*, of *Place*, and *Persons*, which are, in truth, but *Circumstances* to a Marriage-Contract, that it has made me spend so much of your Time, to try to lay aside that Prejudice, and to consider the present Contract in itself. We were not of Age sufficient for Consent, altho' we were of Age according to the Letter of the Law. We gave our Consent to be marry'd, but it was not the Consent of Understanding, for we knew not what it was that Marriage meant. We repeated very solemn Words, after the Priest, as we were bidden; but it was but the Labour of the Lips; the Heart *did*  
not,

*not*, the Heart indeed *could not* go along with them: For whether we take the Heart for *Knowledge*, or *Desire*, there was no *Heart* concern'd in all this Matter: We neither of us knew the Nature of the Contract we were making; we neither of us had so much as the Desire of doing what that Contract both supposes and requires. And now, my Lords, we humbly hope you will not let us be *at Age*, only to do ourselves irreparable Mischief; nor call that a *Consent*, which is to compleat our Ruin, and which can serve no other End.

We do not deny ourselves to have been at *legal Age*; we do not deny that we have given a *verbal Consent*; but we deny ourselves to have been at Years of Understanding, to give such a Consent as is reasonable and fitting in a Matter of such Importance. And we appeal to your Lordships Equity, whether this Age and this Consent shall stand good to our Undoing, and to the Advantage of no Creature in the World besides: For who, my Lords, will be the worse for setting us at Liberty, or who will be the better for our being bound? I am exceedingly sensible, that I have trespass'd much upon your Lordships Patience, but I am bound in Justice and in Conscience to beg a little more of it, to speak a Word or two to the last

Part of the Objection, That since the Parties before you, in Petition, are Man and Wife both by the Laws of God and of the Land; and since by the Laws of God nothing but Adultery can dissolve a Marriage, and no Adultery is pretended here, the Marriage of Consequence continues indissoluble.

To save your Lordships Time, I will grant every thing that can be granted; I grant, that by the Laws of God, nothing can dissolve a compleat Marriage but Adultery; and I grant, that no Adultery is pretended in this Case; but I deny that this Marriage before you, is therefore *indissoluble*, because I must and do deny the Marriage before you to be a *compleat* Marriage, by the Laws of God: And, I hope, with your Lordships Favour and Indulgence, to shew it is not a compleat Marriage, because it never was *consummated*.

The Love and the Desire that Men and Women have of each other, is what is implanted in the Hearts of all of them, by God himself who made them; and is therefore as innoeent an Appetite as any else they have; and it has (as every other Appetite) its proper Satisfaction provided for it by the good Creator: And when it fixes on its proper Object, is satisfy'd as innocently, as the Desire of Meat, or Drink, or Sleep can be. Marriage, my Lords, is  
fixing



fixing the Desire upon its proper Object: And this Desire is never to be satisfy'd with Innocence, but in the Marriage-Bed. The End of Marriage therefore is the Satisfaction of this Appetite. This is the End and Purpose of God in making them Male and Female; this is the Way, the only Way, of their becoming *one Flesh*: And therefore till the End is answer'd, where it can be answer'd, Marriage is not perfect and compleat. God cannot properly be said to have join'd those together, who never join'd themselves together, in the natural Way, of his Appointment: And therefore, under Favour, 'tis a great Misapplication of those sacred Words, to the Case before us, where the two Parties never *came together* in the Sense intended by those Words.

What can be plainer than this Proposition?

The End of Marriage, by God's Institution, is, that two should become one *Flesh*.

The Two before you in the Bill were never yet *One Flesh*. Your Lordships will make the Conclusion.

*Those whom God has join'd let no Man put asunder.*

The Two before you in the Bill were never yet conjoin'd by God, in the true Meaning of those Words; they may therefore

fore as yet be put asunder by *Men*; as I hope they will by your Lordships.

My Lords, the Easiness of granting a Divorce in Cases of *Impotence*, is a good Proof that Marriage is not compleat and perfect where the Ends of it are not to be obtain'd; nay, 'tis a Proof that it was no Marriage, but a *Nullity* from the Beginning, altho' the Parties were at *full Age*, altho' they gave a *free Consent*, and were marry'd with all Formalities; altho' the Priest pronounc'd them Man and Wife in *the Name of the Father, Son, and Holy Ghost*, and said those sacred Words over their Heads, *Those whom God has join'd, let no Man put asunder*, they were not Man and Wife, because they could not become *one Flesh*: They were not join'd by God, because they could not join themselves together. Your Lordships will consider therefore whether a Marriage not consummated (nor ever like to be consummated) be a compleat Marriage in God's Sight; so compleat, I mean, as to be *indissoluble*. I shall be told, I know, that in the Case before us, there is now no Defect of *Power*, no *Impotence* or *Inability* to compleat the Marriage pretended, but want of *Will*.

I own it, and I only use the Instance to shew that a Marriage not consummated, is not *indissoluble* by the Laws of God;

and

and that an utter *Aversion* to the Consummation of Marriage, in both Parties, is as good a Reason for a Divorce, as an Inability in *one Party*, which never fails of procuring a Divorce. In the one Case, the Parties are each of them untouch'd, pure and unfully'd even in Thought; whilst in the other, there must pass such Things, as I have neither *Will* nor *Leave* to mention; and yet a Divorce follows of Course. My Lords, if ever we had *come together* in this Manner, I had not had one Word to reply on this Occasion; all I have said of our *Want of Age* would have signify'd nothing; all I have said of our giving *no Consent* had been said to no Purpose; had Consummation follow'd any Time within these fourteen Years, we must not have appear'd in this Place. But when, to our Want of Age, and Want of Knowledge to consent to Marriage, we can also add, that we have never come together to compleat this Marriage, and that we are as pure from each the other, as we were when born, we humbly hope your Lordships will deliver us from the Chains which the Laws of our Country only have bound us with.

'Tis said, my Lords, that Consummation is not necessary to compleat a Marriage, because a Man is Master of the Woman's Fortune, and the Woman has

a Right to her Dowry, altho' the Man or Woman should chance to die before the Nuptial-Bed were made ready. My Lords, I grant, that when the Parties who were at Age, and Liberty, have given their consent, and the Priest has done his Work, according to the Form prescrib'd, the *Law* is satisfy'd, and looks no farther; and gives each Party a Right to all the Advantages agreed upon, tho' Consummation follow not: The Laws suppose that what is reasonable and fitting will follow, and only secures *legal Advantages* that are contracted for. The other is a Point of Duty and of Conscience. I only ask whether there be a Man or Woman in the World, who thinks that the End of Marriage, as it is God's Ordinance, is fully answer'd, till it be consummated? My Lords, we come not here to say that a Marriage is not a *legal Marriage* 'till Consummation; nor to assign a *Day*, or a *Week*, or a *Month*, for such Completion: We presume not to trifle in that manner in such an Assembly as this. We only mean to say, that a Marriage not consummated, is *dissoluble*, without Offence to any Law of God; and that a Marriage of that Kind is not a compleat Marriage *in his Sight*; the full Purpose of *his Institution* is not answer'd till they become *one Flesh*. All that goes before is previously necessary to the making  
such

such Conjunction innocent, but it is not what is mainly and principally intended by him *who made them Male and Female*. And therefore 'tis but an Impertinence to tell us that *Adam* and *Eve* were compleatly marry'd before they went into the *Bridal-Bower*: 'Tis so with every honest Couple, as well as with our first Parents: But would they have been compleatly marry'd had they never gone into that Bridal-Bower at all, and liv'd for many Years? What Marriage, I pray, would that have been? They might have been good *Company* and good *Friends*, but they could no more have been said to be *Man and Wife*, with respect to what God intended by Marriage, than *two Men*, or *two Women*, living together in *Unity* and *Amity*, may be said to be marry'd together. I believe it would puzzle the Doctors to prove that *Adam* and *Eve* were ever marry'd at all, any otherwise than by a mutual Consent to go together; for there was no consent of any *Superior* to ask or obtain; and there could be no need of promising to be faithful to each other, for there was no Body else to go to. I wonder such an Instance should be pitch'd upon.

But now, my Lords, I come to the great Argument of all which is brought to prove a Marriage *compleat*, tho' its  
d Effect

Effect never follow; and that is, that *Joseph* and the *Blessed Virgin* were, and are often call'd, in the Holy Scripture, *Man and Wife*, altho' we are sure by Scriptures they never came together till the Holy Child was born; and, by *Tradition*, sure they never came together, after it was born.

This Example I take to be the Ground and Bottom of all those absurd Doctrines and Propositions that are rais'd in maintaining a Marriage to be compleat by the Consent of Parties, and the Benediction of the Priest, without any other Fruit or Effect. *Joseph* and the *Blessed Virgin* were certainly espous'd and betroth'd each to the other; and he thereby became so much *her Husband*, that he thought of putting her away, which shews he thought she was *his Wife*: And he is call'd *her Husband* by the Evangelist Saint *Matthew*; and she herself calls *Joseph* the Father of her Son, *Thy Father and I have sought thee sorrowing*: And a little before they are call'd *his Parents*. There is not a Word of all this that I either do, or dare deny. Be pleas'd, my Lords, but to remember and observe, that the same Scriptures that call *Joseph* the *Husband* of the *Blessed Virgin*, do also call *Joseph* the *Father* of her Son; and the same Scriptures that call *Joseph* and *Mary* *Husband* and *Wife*, do also call

*Joseph*



*Joseph* and *Mary* the *Parents* of *Jesus*. And he was in truth as much the *Husband* of the *Virgin* as he was the *Father* of her Son; and much in the same Sense, and to the same Purpose. My Lords, I have taken some Pains to understand this Matter, and what I am going to say I have from very good Authority, living as well as dead, for it is something out of the Way of my Profession. It was absolutely necessary, by God's Appointment, that the Saviour of the World should be *born of a Woman*: And it was, by the same Appointment, full as necessary that he should not be the *Son of Man*, in the common Way. To reconcile these Difficulties therefore, he was *conceiv'd by the Holy Ghost*, and *born of the Virgin Mary*. But because this Saviour of the World was to be, in especial manner, the *Messiah* of the *Jews*, he was to be born a *Jew*; to descend from *Abraham*, according to the Promise, of the Tribe of *Juda*, of the House and Lineage of *David*. This *Messiah* the *Jews* expected should be born as other Men were born; and they would never have receiv'd him as such, or heard him as a Prophet and Teacher sent from God, unless they had believ'd him to be born in *lawful Wedlock*; as they certainly did, or else you would have heard of it over and over in the Gospels, which conceal none of the

Slanders, Contumelies and Reproaches, which the *Jews*, upon all Occasions, did so plentifully pour upon our Saviour. Had the Blessed *Mary* not been *marry'd*, what would the People have said of her? What would they not have said of her and of her Son? It was therefore absolutely necessary to the *Jews* receiving Christ for the *Messiah*, and hearkening to him, that he should be born under the Reputation of *Marriage*; which could not be unless she took a *Husband* in the usual Manner. You see what Entertainment both his Person and Doctrine found, altho' he was suppos'd to be born in Wedlock, and of honest Parents, only because of their mean and low Condition; but what had been his Fortune, had they thought him *spurious*?

I am almost sorry I have Occasion to speak of these Matters; and I restrain myself from going on, in hopes that enough is said to shew, that the Marriage of *Joseph* with the *Blessed Virgin* was all (as I am told the antient Christian Writers call it) *according to Oeconomy*. It was to save Appearances; to cover both the Mother and the Son from the Reproaches of ignorant malicious People, till it should please God, in his own good Time, to manifest the Truth more clearly to the World; and therefore tho' it might be wrapp'd in Prophecies before his Birth, yet it

it was not till after his Death that it became an Article of Faith, that he was *conceiv'd by the Holy Ghost, and born of the Virgin Mary*. During the Life of Christ, *Joseph* was the *suppos'd Husband* of the Blessed Virgin, and the *suppos'd Father* of her Blessed Son: and, under the Cover of that Relation, was to take upon him, under God, the Care and Protection of them both.

Will any Man, after this, pretend to say that this was a *compleat Marriage*, as Marriage is the Ordinance of God? It was compleat to all the Ends and Purposes that God intended by it: It screen'd the Mother and the Son from Blame and Slander; and it provided for them such a Defence and Maintenance as was convenient. But what is this to God's Original Institution? Or how can such a thing be drawn into Example? *Joseph* and *Mary* are said to be marry'd, altho' they never *did* compleat that Marriage, altho' they never *must* compleat it, therefore a Marriage-Contract is a Compleat Marriage in any one else as well as them, altho' they proceed no farther! That is, (I humbly pray your Lordships to observe) there was a Marriage-Contract made, about some 1715 Years ago, betwixt a Holy Man and the most excellent and Holy Maid that ever liv'd upon the Earth; plac'd in such Circumstances

as

as never happen'd before, nor ever will happen again ; and this Couple, by God's Appointment, never were to touch each other, in the matrimonial Way, till the Birth of a Child, that was *to be call'd* (because he truly was) *the Son of God*. Now this most rare, most singular, most unexempl'd Instance, is brought to convince your Lordships, that a bare Marriage-Contract makes a compleat Marriage, according to the Laws of God, without proceeding any farther, in every other Couple that is marry'd: And the Parties, for whom I now appear, are said to be *completely marry'd*, altho' they never came together, because the *Blessed Virgin* and *Joseph* were completely marry'd, altho' they went no farther than a Marriage-Contract, nor ever *could go* farther, by God's Appointment. My Lords, if such an Example as this can operate so extensively and strangely, we must give over making Consequences in the way of Reasons, and attend to the Dictates of our Spiritual Masters, without examining what it is they say. I do not know what Form of Words the *Jews* made use of when they were marry'd; but I know, methinks, that the Form prescrib'd by the *Church of England* would have been very odd, improper, and absurd, to have been us'd to that Blessed Couple, when it describes the

Ends

Ends of Matrimony to be, *First*, For the Procreation of Children; *Secondly*, For a Remedy against Sin; and, *Thirdly*, For mutual Society, Help and Comfort, that the one ought to have of the other. The Sum of all this is, that the Ends of *this particular Marriage*, which God intend- ed, were fully answer'd by a *Marriage-Contract only*; but the Ends of Marriage *in general*, as it is God's Ordinance, nei- ther were, nor might be answer'd by such Contract only; and therefore 'tis an ab- surd unreasonable Thing to argue from the Compleatness of the one, to the Com- pletness of any other, that *may* proceed farther, and that *ought* to proceed farther, and is certainly not compleat till it *does* proceed farther.

Another Argument to prove a Marriage to be compleat, by a Marriage-Contract only, without proceeding to Consumma- tion, is fetch'd from the Law of *Moses*, *Deut. xxii. 23.* where a Woman, betroth'd or espous'd to a Man, is to be stoned to Death, as an Adulteress, if she admit an- other to her Bed; which shews that the Validity of Marriage proceeds from the mutual Covenant and Consent that two have given to be each others.

My Lords, I yield to every Word of this, and to whatever else can be said of the same Kind. A Marriage-Contract does  
certain-

certainly give a Right to every Thing contracted for. As soon as we are marry'd, I have a Right to her *Person*, a Right to her *Fortune*, a Right to her *Reputation*; and if any one injure her in any of those Particulars, I have a Right to her *Vindication*; for she is really mine, and I am hers: And I own I am as much marry'd to her the first Morning, and she to me, as I shall be the Morning or Week after, as to all the Ends and Purposes which human Laws can propose, or take any Cognizance of. And if she abuses any one the Hour after she is marry'd, 'tis I must answer for it. If she gives away any of her Goods, which are now become mine, why no Body can receive them; I shall recover them, for they are mine. And if she give away herself, (though I have never yet come near her) she is certainly an *Adulteress*; she has given away what was mine, and broken her Faith and Contract, and is liable to whatever Penalty the Laws of the Country think fit to inflict upon such Offenders. I could moreover answer this Law of *Moses*, by another Law of the same *Moses*, which sets a Man at Liberty from a Maid he was betroth'd to, if she please him not when the Time of Marriage comes. 'Tis in *Exod. xxi. 8*. And the only Difference is, that the Maid betrothed in *Exodus* was not



not *free*, but a *Servant*; the Maid betrothed in *Deuteronomy* was a *free Woman*. But tho' this makes a great Difference in the Laws and Customs of a Country, yet certainly 'tis none in Point of Conscience: The Obligation there, is alike to *Bond* as *Free*, if other Circumstances make no Difference. But the answering one Objection with another clears up nothing. I own that the Validity of Marriage proceeds from the mutual Covenant. But pray what is this mutual Covenant? Is it not the consenting and agreeing of a Man and Woman to give to each other the Use and Dominion of their Bodies, exclusive of all the World besides, as long as they both shall live? What is it that Parties *contract* for? What is it People *consent to* upon these Occasions? I know it is said by Father *Ambrose*, *Connubium non facit Desfloratio Virginitatis, sed Pactio conjugalis*. And it was said before him long by Father *Ulpian*, *Nuptias non Concubitus sed Consensus facit*. And certainly every Body will say after them, that the Agreement of a Man and Woman to lie together, does not make a *Marriage*. But will St. *Ambrose* tell us, that a *Pactio conjugalis* (a *Marriage-Covenant*) can be fully answer'd without *Concumbency*, if the Parties live and are not hinder'd? In truth

I will not answer for the *Father*, who (as the rest of them) had *Joseph* and *Mary* always in his Eye: But I will answer for the *Civil Lawyer*, who, I am sure, would never say a *Marriage* was compleat, that was not, if it could have been, consummated. Hear what *Modestinus* says, *Nuptiæ sunt Conjunctio Maris & Fæminæ, & Consortium omnis Vitæ*. 'Tis true, he was a *Heathen Lawyer*, but had he also added, that *Marriage* was ordain'd to be a *Remedy against Sin*, he had talk'd the Language of our *Common-Prayer-Book*. For he says it is for the Procreation of Children, (*Conjunctio Maris & Fæminæ*) and for mutual Society, Help, and Comfort, that the one ought to have of the other, and taking each other *for better for worse*, which is but the *English* of *Consortium omnis Vitæ*. *Paulus*, another *Civilian*, says, that *Nuptiæ consistere non possunt nisi consentiant omnes*; i. e. *Qui coeunt, quorumque in Potestate sunt*. There is no such Thing as a *right Marriage*, where there is not the Consent of all Parties; i. e. the Consent of the two, *qui coeunt*, and the Consent of Parents, or Guardians, in whose Power and Disposal the young Ones were. All Writers in the World agree, that *Consent, Covenant, Contract* (call it what you will) is so necessary to a *Marriage*, that it cannot

not be valid without it; but then they also say, that such a Consent is a Consent to answer the Ends of *Marriage*; that such a Covenant is a Covenant to live together according to God's Ordinance; and that such a Contract is a Contract for the Use and Dominion of each others Body; which is, in Effect, neither more nor less than what *St. Paul* has said in *1 Cor. vii. 3 and 4*, which I repeat not, because it is so well known. But they who think a *Marriage* is a *complete and perfect Marriage*, according to God's Ordinance, (for as to *human positive Laws*, I contest it not) altho' it never be consummated; they I desire may read that Passage, and consider it.

My Lords, there is another slight Objection, which I will but just mention, and that is, That the Church allows the *oldest People* that are, to be marry'd, and accounts their *Marriage* good, altho' there is neither Hope nor Likelihood of having Children; and accordingly appoints the Prayer for that Purpose to be omitted and left out: And therefore a *Marriage* is complete by *Contract only*, without any Consummation.

The Argument, I think, is, this, That because a *Marriage* is a *good Marriage* which is *not* consummated, because it *can-*

not be by Reason of People's Age, therefore a *Marriage* is a *good Marriage*, tho' not consummated, which yet *may be* consummated any Day in the Year. If this be a right Inference, there is no making a wrong one, for one can never make a worse. My Lords, the Church neither does nor can pretend to determine when People are too old to *marry*: It meddles with no such Matters, but leaves every one to their Discretion. She seems to assign three Ends of *Marriage*, which I have had occasion to mention before; and if the *first* cannot be answer'd, the *second* may; and so may the *third*, tho' the other two should not.

And now, my Lords, I hope I have shewn that the *Bill* before you is a *good Bill*; that the *Divorce* we sue for is very *reasonable* and *just*, and that such a *Marriage* as *ours*, made at such an Age, with such a Consent as is indeed no Consent, and never consummated, tho' fourteen Years since, is such a *Marriage* as may very innocently be dissolv'd without any manner of Offence to the Laws of God. And I desire any Man to assign any one Law of God that would be hurt thereby, unless we are made to believe, that every *Law of the Church* is also a *Law of God*; which when I hear affirm'd, I shall  
not

not want an Answer to it. But I am sure the Laws of God, which are properly so call'd, are to be found in a *Holy Book*, where nothing appears against us. For as for those Passages, which allow a Man to put away his Wife for no Cause but that of *Adultery*; 'tis certain to a Demonstration, that they refer to *Marriages* that have been *compleated* and *consummated* by Man and Wife. And if your Lordships would indulge me so far, I would venture to say, that no Man of common Sense, can read those Passages and think otherwise. My Lords, he must be a *Scholar*, that can read that *Question* of the *Pharisee's*, and the Determination of our Blessed Saviour, about *Divorces*, and conclude after all, that the *Marriages* there spoken of, might be such *Marriages* as never were consummated, as well as such as were. 'Tis impossible to mistake so plain a Case, without a good deal of Learning and Study. My Lords, it stirs me to a little Indignation, and gives me a Concern somewhat beyond my *Fee*, to hear this *Marriage-Contract* of ours treated like a *Marriage* of fourteen Years Standing, where Man and Wife have all along cohabited, and now are weary of each other, and of the common Bed, and seeking to your Lordships for leave to look for more agreeable Companions. Why  
 else



else are all these Places of *Scripture*  
 brought against *our Bill*, when not a single  
 Line of them is pertinent and proper to  
*our Case*? If they had brought the *Scrip-  
 tures* to prove, that a Boy of fifteen and  
 a Girl of thirteen, not born in Paradise,  
 or in the Gardens of the *East*, but in a  
 cold and frozen Climate of the *North*,  
 were of Age sufficient to dispose of their  
 Persons for ever, they had done something  
 to the Purpose; for that, my Lords, was  
*our Age*. If they had brought the *Scrip-  
 tures* to prove, that a Boy and Girl, of  
 the Years aforesaid, repeating a certain  
*Form of Words*, after a certain Person,  
 in a Church, between the Hours of eight  
 and twelve, had thereby made a Contract  
 that must stand like *Fate*, and be irre-  
 vocable as the Hours that pass'd a Week  
 ago, by any Power on Earth, they had  
 done something to the Purpose, for that  
 indeed we did. I have already own'd, we  
 said what we were bid to say; we did  
 what we were bid to do: We should have  
 done a great deal more, and said a great  
 deal more, had we been order'd so: 'Tis  
 not our Fault, that we did not give it  
 under our Hands, that our *Marriage* was  
*consummated* by the Words we repeated in  
 the Church; had we been ask'd to do so,  
 we surely had done it, such was our In-  
 nocence



nocence, such was our Ignorance! This, my Lords, had been the Point they should have labour'd most to clear; for this they should have brought their *Scripture* Proofs, to shew that the *Words* of a *Marriage-Contract*, are, by God's Appointment, as soon as ever they are utter'd, of so binding a Nature, that neither the Consent of Parties, nor all the Powers that are on Earth, can make them *null* and *void*: That it is proper and peculiar to this *Contract* never to be dissolv'd, tho' nothing but Words has pass'd. All other *Promises*, I must say again, all other *Covenants*, all other *Oaths*, are own'd to be *dissoluble* by the Consent of Parties, where no Injury is done to any Third. The *Marriage-Words*, it seems, are the only Words in the World that operate like a *Charm*, and take Effect, in Spite of all the Reason, and all the new Necessities, that can arise, and be urg'd against it, altho' the Parties should not have so much as touch'd each other's Lips, nor ever shall. Here *Scriptures* would have done exceedingly well, and have obtain'd the Reverence and Obedience that is due to their Authority, had they but shewn, that a *verbal Contract*, made with Solemnity, answers all the Ends and Purposes of *Matrimony*, as it is God's Ordinance; that it is not  
 only

only previously necessary, both by the Laws of God and Man, to make the Conjunction of Man and Woman innocent; but that the *verbal Contract* is the Thing *itself*, 'tis *Matrimony* to all intents and Purposes; and is no more to be dissolv'd than it had been, had the Fruit and Effect of it been half a Dozen Children, now presented at your Lordships Bar. There is no End of the Absurdities that arise from treating a *verbal Contract*, that has only pass'd the Lips, just as you would a *Marriage consummated*, and perfectly compleat; and therefore, tho' I call for their *Scripture-Proofs*, yet I am well assur'd, none can be brought to prove a Point so unreasonable. But to hear them heap up *Scripture* upon *Scripture*, to prove, that *Marriage* is *God's Ordinance*; that *Marriages* are *sacred Contracts*; that by the Laws of Christ they cannot be dissolv'd but for the Cause of Fornication; is, in my humble Opinion, to hear them say nothing to the Purpose, unless those *Scriptures* mean, that *Marriage not Consummated* is God's Ordinance; that *Marriage-Contracts* are sacred, altho' the very *End* and *Meaning* of the Contract is not answer'd; and that *Marriages* which Christ there speaks of as *indissoluble* (except for the sake of *Adultery*) are such *Marriages*

as

as never were consummated. In short, if because the Word *Marriage* is a Word that is common to a Marriage *before* it is consummated, and also *after*, therefore whatever is applicable to a consummated Marriage, is also applicable to a Marriage not consummated; if this be a Consequence, a reasonable Man will be asham'd hereafter of making Consequences. We may as well conclude, that because *Caius* is a Man, and *Titius* is a Man, therefore *Caius* and *Titius* are one and the same Man. They tell us also, from the *Scriptures*, that *Matrimony* signifies to us, the *mystical Union* there is betwixt Christ and his Church; but let them say it, if they think fit, that *Matrimony not consummated* does, or can signify this *Union*: But in this I spare them, and indeed myself, not daring to speak with any freedom on this Subject; and finding I have already transgress'd too far, I humbly desire your Lordships to consider, whether there ever was so equitable a Cause of *Divorce* within the Walls of this House. It is so singular a Case, that it cuts off all your Fears of it becoming an *Example*: The oldest Lawyer living never heard the like in all Respects; nor will the youngest ever live to see it made a Precedent: But were there twenty such like Cases now before you, they

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are

are so *reasonable* and *just*, that they would every one deserve to be reliev'd by your Lordships; and 'tis below the Dignity of the Legislative Power to be afraid of making Precedents, where there is *Reason*, and *Justice*, and *Compassion* on their Side. To all which we lay as strong a Claim, as ever Parties did that ever were before this *House*.



NUMB.

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## NUMB. II.

*Concerning the Proofs of IMPO-  
TENCY: That there are no real  
natural Marks of VIRGINITY,  
and that all the pretended ones  
may be effected by ART.*



IN the CASE before us, the  
Fact, in short, is this :

A Marriage has been cele-  
brated by the Church between  
Persons who Petition to be  
separated for *Impotency*, it therefore lies  
upon the Complainant to prove, *mani-  
festis & certissimis documentis*, by manifest  
and indubitable Evidences, according to  
Canon LI. of the IVth Lateran Council  
under *Innocent III.* that, the *Impotency*-  
complained of is true, real, natural, and  
perpetual. This Proposition I presume  
will be allowed to be incontestible.

Zachias, in *Decis. Rotæ* 54. N° 7. *Cum  
agitur de dirimendo matrimonio, probationes  
debent esse concludentissimæ, —nec Rota at-  
tendit præsumptiones & conjecturæ.* “ In a

“ Trial for *dissolving a Marriage*, the  
 “ Proofs ought to be most conclusive,—  
 “ the Court does not regard Presumptions  
 “ and Guesses.”

According to the Summary of Chap. *Accepisti*, and according to *Hostiensis*, it is necessary, that *indubitato modo convincatur impotentia*, “ Impotence be proved in the  
 “ clearest Manner.”

*Sanichus*, in *Schola Canonica*, Edit. 2. Anno 1692, Tom. 1. p. 228. c. 2. No. 1. *Impedimentum Impotentiae debet evidenti probatione & signo doceri*. “ The Case of  
 “ Impotence ought to be made appear by  
 “ evident Signs and Proofs.”

And for this Reason the Judgments of the Church, according to the Decretals, and generally according to the Canonists and Theologists, are only provisional: *Cum appareat ex post facto Ecclesiam fuisse deceptam*. Gloss. in cap. *Accepisti*. “ If  
 “ it shall appear afterwards that the  
 “ Church was impos'd on.”

*Dominicus Soto*, in 4 Dist. 34. A. 2. a Divine of the Council of Trent, *Quomodo-  
 documque separantur conjuges, si postea ex-  
 perimento comperitur, illum qui inhabilis  
 judicatus est, habilem esse, remigrare ad pri-  
 mum debet Matrimonium*: “ However mar-  
 “ ried Persons may be separated, if it ap-  
 “ pear afterwards that he who was judg'd  
 “ im-



" impotent becomes capable, he ought to  
 " return to his first Marriage."

The Custom of *France* does not admit  
 such provisional, conditional Judgments;  
 and its Maxim, *Res judicata pro veritate*  
*habetur*, " A Matter adjudg'd, ought to  
 " be held for *Truth*," obliges it with  
 stronger Reasons not to pronounce Mar-  
 riages null upon account of *Impotency*, but  
 upon most certain and indubitable Proofs,  
*manifestis & certissimis documentis*.

The Question therefore ought now to  
 be only this, Whether the *Visitation* of the  
*Wife*, supposing she be declared a *Virgin*,  
 is a certain and indubitable Proof of the  
*Impotency* of the *Husband*? because its be-  
 ing doubtful, is enough to cause it to be  
 rejected, according to all the Doctors.

*Zachias*, in *Decis. Rotæ in Caus. dissol.*  
*Matrimonii Taurin*, decides, that this Proof  
 is fallacious: *Puella ab obstetricibus reperta*  
*fuit virgo; sed hujusmodi judicium est fallax*:  
 " A young Woman was found a *Virgin*  
 " by the *Midwives*; but this kind of  
 " Proof is uncertain." He quotes *Hosli-*  
*ensis*, *Abbas*, and *Lopes*; and says, That,  
 without regard to a Report in the *Wife's*  
*Favour*, the *Rota* confirm'd the Marriage,  
 and rejected the *Wife's* Suit.

Certainly the Inspection of the *Wife*  
 neither decides for or against the *Husband's*  
*Ability*: It did not decide for it in the Af-  
 fair

fair of the Marquis de Langey; for notwithstanding that his Wife, who had accus'd him of *Impotency*, was not, in the Inspection of her Person, found a Virgin, yet her Marriage was declar'd null: The Visitation of the Wife therefore can prove nothing as to the Ability of the Husband. There are a thousand Ways of losing the Marks of Virginity, without having to do with a Man; there are, in like manner, a thousand Ways of recovering them again, when it has been really lost by having to do with a Man, as shall be made appear; and consequently *Virginity* may not be admitted as a Proof of the Husband's *Insufficiency*.

And, indeed, nothing is more uncertain, than inspecting the *Wife*, to know whether she be a *Virgin* or no.

In three Theses of the Faculty of Physic at *Paris*, it has been determin'd, *Nulla dantur Virginitatis signa*.

In the Time of St. Cyprian, the World was perswaded of this, *Nam & manus & oculi obstetricum sepe falluntur*: "The Hands and Eyes of Midwives are often deceiv'd." And even before that Time: *Nec aliqua putet hac se excusatione posse defendi quod inspicere possit*. "Let none think to defend her self, by saying, she is willing to be inspected." He therefore rejects this Proof, as defective.

St.

St. Ambrose, in *Ep. ad Syagrium* 5. 1. *class. Novæ Edit.* says, that the ancientest and most knowing Physicians and Surgeons were of Opinion, that *Virginity* could not possibly be known. *Archiatri dicunt, non satis liquido comprehendendi inspectionis fidem, & ipsis Medicinæ vetustis Doctoribus id sententiæ fuisse.* “ The greatest Physicians say, there is no trusting to Inspection; and this was the Opinion of “ the oldest of their Faculty.”

This same Saint speaking of such Women, as petition to be inspected; says, that they are most to be doubted of. *Plus dubitandum de ea quæ inspiciendam se præbuerit, quàm de ea quæ non fuerit inspecta.*

St. Augustin, in *civit. Dei, Lib. 1. c. 18.* *Obstetrix virginis cujusdam integritatem manu velut explorans sive malevolentia, sive inscitia, sive casu, dum inspexit perdidit.* “ A Midwife, examining the Integrity of a Woman, may make a false “ Report thro’ Ill-will, or Ignorance, or “ some Accident.”

Let not therefore any one tell us, with a romantic Air, that the Inspection of Wives (as a certain Proof of their Husband’s *Impotency*, in Case they are found to be Virgins) is a Proof that has been admitted in all Times; since no Inspection can be instanc’d, but of young unmarried

married Women, that had been accus'd of violating their Vow of Virginity; and such Inspections as the Holy Fathers have condemned for being defective and uncertain Proofs.

Some have talk'd of 1500 Years Antiquity; but have not been able to cite so much as one Decretal; for the only one, namely, that of *Proposuiti*, which was made towards the End of the 12th Century, is absolutely unmaintainable; and whoever would go about to make use of it, as an Authority, must shut his Eyes to the Sun at Noon-day, and say it is Night.

With what Front can such Men advance, that the Inspection of Wives has been admitted, in all Times, and in all Ages, as a Proof of their Husband's *Insufficiency*? when it is a granted Point, that during the first six Centuries, the Church knew nothing of *Impotency's* being an Impediment; and since these Men have been convinc'd, that to those six Centuries must be added six more; and since there is not any one Decretal throughout the whole Title *de frigidis*, that does order the Inspection of the Wife, as a Proof of the Ability or Inability of the Husband.

Zachias, in lib. iv. Tit. 2. q. 1. n. 14.  
There are not (says he) any certain Marks

of Virginitie, to know whether it has been violated or no: This, adds he, is the Sentiment of all the Physicians and Surgeons that have lately written; *acceptissima est hæc conclusio recentioribus omnibus*: He cites *Jubart. lib. 5. of Vulgar Errors, c. 4. Parreius, l. de Renunciatione. Augenius ep. l. 1. c. 2. Fortunatus fidel. l. 3. de relat. medic. c. 1. Condrocius in methodo testificat. c. 11. Naucelius in Analogia, lib. 7. part. 3. problemat. 5. Ulaius in Uteribus mulieribus, c. 6. Vallis de sacra Philosophia, c. 25. Vincentius Alsatus de quæstis per epistolas, centur. 4*; "and several other very Learned Physicians (adds Zachias) which I could name;" and among the Lawyers, *Cujas 17. observat. c. 20. reported by Sanchez, l. 7. disp. 113. num. 10.*

*Cypræus de sponsalibus, cap. 13. sect. 51. Omnium Doctorum judicio sæpe manus & oculi fallunt, & indicia virginitatis à certitudine absunt, quòd hæc signa facile imitari, & mentiri fæminæ possint, & viris fucum facere.* "It is the Opinion of all the Doctors, that the Hands and Eyes are often deceiv'd, and that the Signs of Virginitie are far from being certain, because Women can easily imitate and counterfeit them, and so impose upon their Husbands."

g

Other



Other Physicians, Surgeons, and Anatomists: *Delaurens* a famous Anatomist, *lib. 7. q. 13. p. 366.* of the *Hymen*, and the Marks of Virginity, assures us, that he is convinc'd, by a great many Experiments, that there is no such Membrane as the *Hymen* is describ'd to be; and that if such a one is found, it is not *in the Institution of Nature*; that thus we must look out for other Marks of Virginity, and he knows of none.

*Diemerbroeck, l. 1. c. 26. p. 149.* relates the Doubts of *Oribasius, Soranus, Fernelius*, and *Du Laurens*; and concludes, that there is no certain Rule whereby to judge whether a Woman has lost her Virginity or no. They furthermore cite *Galen, Bartholomæus, Eustachius, de Graaf, Riolan, Plempius, Fabricius, Henry Minichen, Verrbeien*, and, of late, *Lami, Rhosne, Dionis, Mauriceau*, and *Devaux*, who all affirm, that there is no certain Mark of Virginity.

*Lami*, in his Anatomical Discourses, 2d Edit. p. 184. One can hardly ever certainly know that a Woman is not a Virgin, unless she has had a Child, or has been too much debauch'd.

*Rhosne*, a famous Physician, Professor at *Lipswick*, in his Treatise of the Duty of a Physician, in the publick Reports printed in 1704, says, That the Difficulty of the Deposition proceeds from the Uncertainty



certainty of the Signs: *It is difficult, for Example, says he, to know whether a young Woman has lost her Virginity, because Virginity has no certain Marks, by which it may be certainly known.*

*Dionis*, in his *Anatomy of Man* demonstrated at the *Garden-Royal*, *Demonstration* 4. p. 275, rejects the *Hymen*, it not being a Mark of Virginity; and if there is any such, says he, 'tis a very narrow Opening, pinch'd in by the *Carunculi Myrtiformes*; he adds, that *there are young Women, who are so narrow, that they cannot have to do with Man without great Pain*; and pag. 276, he adds, *that the internal Orifice of the Matrix shuts itself, after Coition, so very close, that the minutest Thing cannot enter*; and p. 277, *the Neck, as well as the internal Orifice shuts itself again, post coitum.*

*Mauriceau*, in his *Treatise of the Distempers of Women*, c. 6. *No Women, be they of what Age they will, have any Mark whereby their Virginity may be guess'd, besides the Carunculi Myrtiformes, which make the Neck of the Matrix more narrow; I say, guess'd and not known; for often the Windings and Traces of the Vulva are as hard to know, as that of those three Things mention'd in Scripture.*

*Devaux*, Provost of the Company of Surgeons at *Paris*, in his *Book of the Art*

of making Reports in Surgery, printed in 1703, c. 20. p. 420. *Among all the Marks which Authors have given of Virginity, there is not one absolutely certain and indubitable:* He afterwards confutes Se-verin, Pineau, and all the others that say there are Signs of Virginity, and concludes, p. 429. *That the most certain Signs to judge of the Virtue of the Sex being of so little Certainty, as they really are, for the Reasons which have been alledg'd, the Judges of Contests upon so nice a Point, ought to follow the Advice of Subisius; and Chap. 21. p. 432. The Signs of Virginity are very obscure and very equivocal.*

Solomon himself places Virginity among the things that cannot be discover'd: According to the Hebrew Text, *Viam viri in virgine, vel in adolescentula; The Way of a Man with a Maid;* as the best Commentators, as well antient as modern, have understood that Text.

Cypræus, before cited, assures us, that it is the unanimous Opinion of all the Doctors of Physic (*Omnium Doëtorum judicio*) that there are no certain Signs of Virginity.

*De Rëies Francus Medicus. L. Cui Titulus: Elysius jucundarum quæstionum campus. q. 39. num. 29.* also says, that 'tis the Opinion of all the Physicians; *conclusio omnium Medicorum votis confirmata; signum*

*signum scilicet virginitatis nullum certum proprium dari, quibus & nos assentimur;*

"That there can be no proper, infallible  
"Proof of Virginitie; to which we also  
"agree." He afterwards rejects all the  
pretended Signs of *Virginitie*, which he  
calls Follies and Trifles, *nugæ*; and con-  
cludes, that the Visitation of the Wife  
cannot produce the least Probability be-  
fore the Judges: *Nec illa inspectio ali-*  
*quid probabile apud judices convincit.*

The Doctors of Law have the same  
Thought of Virginitie: *Cujacius*, upon  
Chap. *Proposuiſti*, and in *Lib. 17.* of his  
Observations, c. 27. *Tagereau*, c. 4. *Hot-*  
*man*, c. 3. *Boierius*, upon Chap. *Contine-*  
*batur*: *Hostiensis* in his Sum. Fol. 23, *Ve-*  
*nice* Edition; *Fevret* of Abuse, c. 14. In  
*Anne Robert*, the Advocate of a Woman,  
who accus'd her Husband of *Impotency*,  
agrees, that *incerta & periculosa est visi-*  
*tationum fides*; "the Result of Visitations  
"is uncertain and hazardous;" and it is  
this Uncertainty that caus'd the Ordina-  
tion of the Congress.

The most skilful Doctors, Theologists,  
or Casuists, are of the same Opinion.  
We may see *Sanchez*, who quotes one  
*Fragosus*, a Physician, whom we have not  
reckon'd among those quoted above.

*Pontius*, who has the most learnedly  
written concerning Marriage, l. 7. c. 66.  
num.

*num. 2. fallax est inspectio an virgo sit.*  
 The Eyes and Hands are deceiv'd in it;  
*num. 8. Si mulier asserat se incognitam,*  
*vir autem affirmet, & alias non sunt alie*  
*probationes convincentes, credendum est viri*  
*juramento juxta cap. Si quis, and Chap. 1.*  
*de frigidis: Neque vero obstabit quamvis*  
*mulier exhibeat se inspiciendam, & incor-*  
*rupta appareat, cum ea inspectio fallax om-*  
*nino sit, ac possit fœmina in odium viri fa-*  
*cile se virginem ementiri:* " If the Wife  
 " denies Consummation, and the Husband  
 " asserts it, and there be no other con-  
 " vincing Proofs, the Husband's Oath shall  
 " be taken, according to the Chapter *Si*  
 " *quis*: And that notwithstanding the  
 " Wife offers her self to be inspected, and  
 " appears entire; since Inspection cannot  
 " at all be depended on, it being in the  
 " Power of a Wife who hates her Hus-  
 " band, to counterfeit Virginity. " The  
 Visitation of the Wife can conclude  
 nothing in her Favour.

*Ibid. num. 4.* The same Theologift  
 says, that Chap. *Accepisti* cannot be re-  
 concil'd with Chap. *Laudabilem*; but by  
 saying, that the Complaints of the Wife  
 ought not to be hearkn'd to, unless she  
 complain'd within the first six Months of  
 her Marriage, and address'd herself to the  
 Bishop, or to his Official.

*Comitolus,*

*Comitolus*, one of the most generally approved Casuists, in his *Moral-Answers*, l. 1. q. 113. rejects the Visitation of the Wife, as infamous, and as being incapable of furnishing any Proof. The Thing, says he, having been thus decided in his Time, by the whole University of *Padua*: *Inspectio virginis vana est & turpis: futilis & vana, quia qui eam adjicit putat dari certa signa virginitatis, cum ea non dari superioribus annis in frequenti cœtu Medicorum Philosophorum Academiæ Pataviæ persubtili inter eos Doctores habita disputatione constitutum sit; turpis, quia totius familiæ nomen & splendor fœdaretur.* “ The Inspection of a Virgin is both impertinent and scandalous: Impertinent, because it is presum’d it can discover certain Signs of Virginity; whereas it has been nicely disputed and resolved of late Years in a great Assembly of Physicians and Philosophers of the University of *Padua*, that there are no such Signs; and scandalous, because it leaves a Blot upon the Name and Honour of the whole Family.

It is not true that this Author afterwards retracts what we just now read. “ The Case he decides, is of a Man, who had engag’d himself to marry a young Woman, upon Condition she was a Virgin; and he concludes with the Authors

“ thors he cites, that he is oblig’d to marry  
 “ her, if she can prove her Virginity,  
 “ *sine crimine & ejus infamia* :” Thus the  
 Question is not concerning *Virginity*,  
 as a Proof of the *Impotency* of her  
 Husband.

M. de S. Beave, a very skilful Doctor  
 in Morality, Case 83. Tome 1. of his  
 Resolutions, printed after his Death: *What*  
*I say of the Visitation of the Wife, and the*  
*Congress*, [The *Congress* was performing the  
*Act of Generation* in the Presence of Ec-  
 clestiaſtical Courts, but this obscene Custom  
 was abolish’d in *France*, Ann. 1677.] It  
 is my Opinion, in which I am so well fix’d,  
 that I do not think it in the Power of a  
 Judge to act contrary to it, and to support  
 upon two Proofs, as uncertain as they are  
 shameful and indecent, a Judgment in De-  
 claration of Nullity of Marriage — It  
 cannot be judg’d by the Inspection (of the  
 Wife) whether the Marriage has been con-  
 summated or no.

Besides, the Physicians and Canonists  
 agree, that there are a great many made-  
*Virginities*, and that in iis plurima sunt  
 commenta: They bring a hundred Ex-  
 amples of this.

Ambrose Pareius relates, that a Woman,  
 at the 2d Time of her being with Child,  
 had so contracted her Parts by Astringents,  
 that



that they were forc'd to make an Incision, to deliver her of her second Child.

*Riolanus*: That at *Paris* he saw a Woman brought to Bed, who was so streight, that the Point of a Lancet could not enter.

*Henry Minichen*: That a young Woman was brought to Bed, whose Parts could not admit so much as a Pea.

*Rëes*, citing *Nicole*, says, that the Matrons having deliver'd a Woman, made her so streight, that she was no longer in a Condition to suffer the Company of any Man; and he quotes from *Pinæus*, that a young Woman, who had had a Child before she was married, had so streighten'd herself, that her Husband swore he found her a Virgin. Finally, he condemns *Augenius*, for having given the Particulars of those astringent Remedies: *Quæ enim* says he, *nefas scire, nescire necesse est*: "It is our Duty to be ignorant of things unlawful to be known."

*Cypræus*: *hæc signa imitari & mentiri fœminæ, & viris fucum facere possunt*; "Women can easily imitate and counterfeit these Signs, and so impose upon Men."

*Zachias*, in the Place before-mention'd, says, that it is easy so to contract the Parts by Astringents, that the most profligate Strumpet may pass for a Virgin: *Facile est per medicamenta aded genitalia fœminea*  
h *restringi*

*restringi posse, ut corruptissimum & subagitatissimum scortum virginem præ se ferat:*

“ It is easy for Women’s natural Parts to  
 “ be so contracted by Medicaments, that  
 “ the most debauch’d Prostitute may pass  
 “ for a Maid .”

The Example cited by *Høstiensis*, an Official, and learned Casuist, would alone be sufficient to confirm this Truth: *Fuit in Pedemonte quædam Domina, Caratalla nomine, quæ instrumentum suum adeò contractavit, quod & viro & omnibus aliis, inhabilis fuit facta; nec postea potuit adjuvari per aliquem medicum:* “ There was in  
 “ Piedmont a certain Lady, Caratalla by  
 “ Name, who had so contracted those  
 “ Parts, as to be absolutely impenetrable;  
 “ neither could the Physicians afford her  
 “ any Help. ”

St. *Ambrose*, in the afore-cited Epistle, has the same Thought, and expresses it with a great deal of *Energy*: *Facilius est ut refutet quod nunquam fecerit, quàm quod fecerit.*

*It is says he, more easy for a Woman to make her self seem a Virgin, when she is not; than to make herself seem deflower’d, when she really is.*

*Pontius*, above-cited, affirms the same Thing of factitious Virginities.

In

\* In short, no Body is ignorant, that Nature is perpetually at work, especially in young People, to repair the Solutions of Continuity.

For this Reason, independent of the Uncertainty of Inspection, a Husband is concern'd to oppose the Search of his Wife, especially if they have been separated for a Year; during which Time, both Nature and Art may have been endeavouring at a Reparation; besides that, the Ignorance and Covetousness of Matrons, have in all Times made the Truth of their Reports very questionable.

It is notorious, what is said thereof in the Poet Ovid, *Post aliquot luces, ita cuncta premuntur & apta in sese reducunt. Quid? cum res juvatur: nam rimam fota stringunt fucisque coercent.*

Prophane History, and even Fable, shews us how offensive the Discovering of a Woman's Nudities were to the Beholder; and of this we have an Example in the purchasing of Slaves. Seneca speaks thereof with Indignation: *Nuda stetit in litore ad fastidium emptoris, omnes corporis partes &*

\* Mauriceau, above-quoted, says, *the internal Orifice of the Matrix shuts itself again post coitum: which is an Answer to what Begon erroneously asserts, that Astringents can only close the exterior Surface.*

*inspectæ & contrectatæ sunt.* “ She was  
 “ exposed naked on the Shore, enough to  
 “ make the Buyer loath her. All Parts  
 “ of her Body were seen and touch’d.

\* The *Roman Law*, both old and new, concurs in exempting Wives from Visitation, even tho’ it related to their Marriage; and this, because they would not violate their Honour! Ought our Laws to make more free with the Sex’s Modesty?

† We have already quoted three Canons in Chap. *de Droit*, which, at least, import, that the Husband must be believ’d, when he swears he has consummated; and it is plain from *Pontius, lib. 7. c. 63. num. 5.* that this is the Sentiment of the Canonists, *Innocent, in c. 1. prima parte, num. 4. John Andreas, num. 9. Butreius, num. 35. Versu quandocunque probant de Restitutione spoliatorum. Abbas, in c. 1. num. 3. de clandest. desponsat. Panormitanus c. 1. num. 3. de clandest. nupt. Reta apud Farinassium, vol. 2. concil. decis. III. & decis. 112. num. 6.*

*Dominicus Soto*, a Divine of the Council of *Trent*, whom Mr. *Pithou* refers to, as having very learnedly treated of this

\* *Justinian: quod in fæminis etiam antiquis impudicum visus est.*

† *These Chapters are, Si quis, Accepisti, and Continebatur.*

Mat-

Matter, that even *Condormition* alone makes it impossible to prove *Non-consummation*.

\* *Si autem maneant in eodem thoro ut conjuges, negativa pars Consummationis probari neutiquam potest.* " If they lodge in the " same Bed as married Persons, it is im- " possible to prove there was no Con- " summation."

The Gloss upon Chap. *Si quis: Quia fuit sola cum solo, creditur cognita ab ipso.*

As to the Visitation of Wives, a great Number of Theologists, Canonists, Physicians, Surgeons, Anatomists, and even the most enlighten'd Fathers of the Church, St. *Cyprian*, St. *Ambrose*, St. *Augustin*, reject this Proof as scandalous, erroneous, and, at least, uncertain.

Are our wisest Theologists, and our best approv'd Casuists, to be look'd upon as Visionaries? while a self-conceited *Sciolist* must pass for an Angel drop'd from Heaven, to persuade us what 'till now was never believ'd, namely, that *inspect-*ing the Wife, is a certain Proof of the Husband's *Impotency*; all the Doctors in Theology, in Law, in Physic, having look'd upon it as altogether uncertain, and the most defective of all Proofs, and never as an absolute and perpetual Proof of the Husband's *Impotency*; common Sense

\* *Im. 4. sent. de 34. qu. 1. art. 2.*

is enough to enable any one to conceive, that such *Inspection* of the Wife may not be admitted for a Proof of her Virginity: *nimis vincere invidiosum*.

Let the Rhetorick of such Pedants display it self ever so much, they will never convince the Publick of the Efficacy of that Proof.

In short, *Dominicus Soto* concludes, that the Judges ought to make use of their utmost Circumspection, and not to separate married People; but to confirm their nuptial Ties, when they meet with nothing but uncertain and doubtful Proofs of Impotency. *Quocirca adhibenda est maxima prudentia judicis, & re dubiâ proferenda est sententia in favorem matrimonii ne dirimatur, alioqui fraudibus & dolis sterneretur via.*

If *Soto* has been speaking of absolute and unconditional Judgments, such as admitted of no Return to the *Nuptial Bed*; what Certainty and what demonstrative Proofs would he not have insisted on, before he would have pronounc'd a *Marriage null*, on account of *Impotency*.

NUMB.





## N U M B. III.

*The Chapter Fraternitatis of Innocent III. Anno 1212.*

**F**Raternitatis tuæ Literas accepimus continentes quod O. mulier cuidam viro matrimonialiter nupsit, cum quo per multos annos morata, non potuit carnaliter ab ipso cognosci: licet autem per Archipresbyterum tuum super hoc fuisses edoctus; tamen tu volens certitudinem habere pleniorē, quasdam matronas suæ parochiæ providas & honestas ad tuam præsentiam evocasti, districtè illis injungens sub periculo

**W**E have received the Letter of our Brother, containing an Account of a Woman who was married to a certain Person O. with whom she co-habited for many Years, but could not be known carnally by him: And that though you were informed of this by your Arch-Presbyter, yet being willing to receive a fuller Certainty of the Case, you convened certain discreet and honourable Matrons before you, and strictly en-

ani-

animarum ut mulierem ipsam prudenter inspicerent, utrum idonea esset ad viriles amplexus; quæ tandem in fide sua tibi asseruerunt constanter quod eadem nunquam poterat esse mater aut conjux, tanquam cui naturale deerat instrumentum. Unde inter ipsam & virum divortium celebrasti, mulierem inducens ut ad religionem aliquam se transferret perpetuam continentiam servatura; & viro licentiam tribuisti ut uxorem duceret, quia patrem fieri cupiebat. Contigit autem postea, quod mulier invenit qui feras hujusmodi referavit, & abjiciens continentiam quam promisit, G. Latori præsentium super nupsit. Quamvis i-

join'd them, at the Peril of their Souls, to inspect and examine the Woman carefully, to know if she were capable of Coition; who at length affirmed solemnly, upon their Reputation, that the said Person could never be either a Mother, or a Wife, as wanting the Organs of Generation. Upon which you issued a Divorce between her and her Husband; persuading the Woman to enter into some Religious House to preserve a perpetual Chastity; and gave the Man Liberty to marry another Wife, because he desired to become a Father. But it afterwards happened, that the Woman met those Locks of Na-  
gitur

gitur semiplenè nobis  
 exprefferis, quomodo  
 dicta mulier se promi-  
 ferit continentiam ser-  
 vaturam, utrum vide-  
 licet simplici verbo an  
 voto solemnì, utrumve  
 ad religionem transferit,  
 ut promisit, an contra  
 promissionem suam in  
 domo remanserit; &  
 qualiter feras illius fe-  
 cerit referari, utrùm vi-  
 delicet artificio medici,  
 an concubitu viri, seu  
 alio quolibet modo; nos  
 tamen perspicaciter at-  
 tendentes, quòd impedi-  
 mentum illud non erat  
 perpetuum, quod præ-  
 ter divinum miraculum  
 per opus humanum abs-  
 que corporali periculo  
 potuit removeri, sen-  
 tentiam divortii per er-  
 rorem probabilem no-  
 vimus esse prolatam,  
 cùm pateat ex post fac-  
 to, quod ipsa cognosci-  
 bilis erat cujus simili  
 commiscetur: & ideo  
 inter ipsam & primum

*opened those Locks  
 of Nature, and she  
 without any Re-  
 gard to the Conti-  
 nence she had pro-  
 mised, married a-  
 nother person G.  
 Altho' therefore you  
 have not fully ex-  
 pressed your self to  
 us in what manner  
 the aforesaid Wo-  
 man promised to  
 preserve her Cha-  
 stity, whether by  
 her Word, or by a  
 Vow, whether she  
 did enter into any  
 Religious House, as  
 she had promised,  
 or whether she staid  
 at Home contrary  
 to her Promise; as  
 likewise in what  
 manner those Locks  
 of Nature were o-  
 pened, whether by  
 the Art of a Phy-  
 sician, or by Coition  
 with a Man; yet  
 we carefully ob-  
 serving, that the  
 virum*

virum dicimus matrimonium extitisse; quare inter eam & præfatum Guil. matrimonium non esse censemus, eosque præcipimus ab invicem separari. Et si prædicta mulier ad religionem transierit, sicut asserit promississe, & primus vir non cognovit eandem, cum ea remaneat, cum qua postmodum autoritate Ecclesiæ contraxit: alioquin illâ dimissâ debet ad illam redire cum qua primò contraxit, nisi se voto mulier illa constrinxerit ad continentiam servandam, ut intelligatur per hoc cum præfato Guil. fornicata fuisse, vel sese fornicario modo alii viro miscuerit, ut primus vir prætextu fornicationis ejus velit consortium declinare: Nam si tantùm simplici verbo promisit se continentiam servaturam, & postea in conspectu Ec-

*Impediment was not perpetual, that it was removable without a Miracle by a human Power, and without Danger to the Patient; know that the Sentence of Divorce was pronounced by a probable Error, since it appears, by an After-Act, that she was capable of being known; and therefore we pronounce that there was a Marriage between her and the first Man; and accordingly we think that there is no Marriage between her and the last Person, and therefore command that they be separated. And if the foresaid Woman will enter into a religious Life, as she says she is engaged*  
 clesiæ

clesiæ nupfit memorato Guil. quamdiu articulus iste dubitabilis erat, præsumi non debet quod fornicaretur cum illo; sed modo non debet aliquatenus cum illo remanere. Per hæc autem quæstionem illam noveris esse solutam, qua quæritur utrum ea quæ adeo arcta est, ut nulli possit carnaliter commisceri, nisi per incisionem aut alio simili modo violentia inferatur, non solummodo levis, sed fortè tam gravis, ut ex ea mortis periculum teneatur ad matrimonium contrahendum; debet idonea perhiberi. Similiter, quæ viro cui nupserat adeò arcta est, ut nunquam ab eo valeat deflorari; si ab eo per iudicium Ecclesiæ separata nubat alteri, cui arcta non sit, & per frequentem usum secundi reddatur etiam

*to do, and the first Husband knew her not, let him live with his second Wife; otherwise she that was divorced must return to him again, except she has vow'd continency; that hereby it may appear that she committed Fornication with the other Man, or with some Body else, on which Account the first Husband refuses to live with her. For if she had barely made a Promise of Continency, and afterwards married the second Man while her former Marriage was doubtful, she ought not to be charged with Fornication on that Account: However she must not live with him any longer.*

apta primo, utrum ad eum redire debeat,  
cum quo priùs fœdus inierat conjugale. De  
talibus autem non est facilè judicandum,  
cùm finale iudicium pendeat ex futuro.



NUMB.





## NUMB. IV.

*Depositions taken in the Case of the  
Earl of Essex, and the Lady  
Howard.*

*The Oath taken by the Lady Frances Howard.*

**T**HAT since the Earl of *Essex* was Eighteen Years of Age, he and I have for the space of three Years diverse and sundry times lain together in naked Bed all Night. And at sundry of the said Times, the said Earl hath purposedly endeavoured and attempted to consummate Marriage with me, and to have carnal Copulation with me for procreation of Children: And I have at such Times, as the said Earl hath attempted so to do, yielded my self willing to the same Purpose. All which notwithstanding, I say and affirm upon my Oath, that the said Earl never had carnal Copulation with me,

FRANCES HOWARD.

NUMB.



## N U M B. V.

*Depositions, upon the Articles of the  
Libel put in by the Lady Frances  
Howard, taken June 2. 1613.*

**K** *Atbarine Finies*, Daughter of *Thomas Lord Clinton*, aged about 18 Years, deposeth, 1st, That she hath known the *Lady Frances* for about a Year and half; and the *Lord Essex* for above a Year.

2dly, That from *Midsummer* last to *All-hollontide*, the *Earl of Essex* and *Lady Frances* remained and kept Company together as Man and Wife; first in the Countess of *Leicester's* House at *Drayton* in *Warwickshire*; and after at the *Earl's* own House at *Chartley* in *Staffordshire*: And that for two of the Nights they lodged at *Drayton*, being on a *Sunday* at Night and on a *Monday* at Night, they, to her Knowledge, lay together in one Chamber; she seeing the *Earl* go into the said Chamber undress'd and ready for Bed; and she verily believes they did lie together in the same Bed those two Nights, for that she knows there was but one Bed in the said Cham-

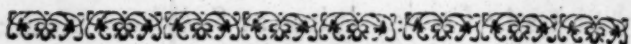
Chamber. That before *Christmas* last, the said Lady *Frances* lying at *Salisbury House* in the *Strand*, the Earl came thither and went into the Chamber where Lady *Frances* was in Bed, and went to Bed to her, and there was no other Bed in that Chamber; and this Deponent heard the Earl and Lady *Frances* talking together a good part of that Night.

*Her Depositions to the Interrogatories administered for the other Side.*

3dly, That as to this Cause she favours both Parties equally; that her Conversation is most with the Plaintiff, and that if it were in her Power, she would give the Decision according to Right.

4thly, That she was not compelled, but was made acquainted by some that she should be used as a Witness in this Cause, and had Notice given her when she should come.

NUMB.



## NUM B. VI.

*The Deposition of Elizabeth Raye,  
the Daughter of William Raye,  
of Woodstock in Oxfordshire,  
Gent. taken to the Libel: Aged  
about 20 Years.*

1st. **T**HAT she has known the Lady *Frances* for above two Years; and the Earl of *Essex* for the same time.

2dly, That she serv'd the Lady *Frances* for above twelve Months, and that shortly after she came to serve her, my Lady went to my Lord *Knowles's* House at *Cawsam* in *Oxfordshire*, where she staid about a Fortnight, and the Lord *Essex* came thither to her, and laid in naked Bed with the said Lady *Frances* divers Nights, as this Deponent hath heard them report that attended the Lady in her Chamber: That the Deponent herself at *Drayton* attending the said Lady in her Chamber, did see them in naked Bed together as Man and Wife for divers Nights; as they did likewise afterwards at *Chartley*, for above a Quarter of a Year, and at *Michaelmas* after that, at *Durham* House in *London*.

*Her*

*Her Examination to the Interrogatories on  
the other side.*

3dly, That she favours both Parties equally; converses with neither of them; and, if in her Power, would have Right take Place.

4th Art. Answers Negatively.

5th Art. That she was requested to come to testify in this Cause, but was not compelled by any Process.

6th Art. Hath heard it reported that the Earl of *Essex* was 22 Years Old in *January* last.

7th and 8th Art. No wise concern this Deponent.





## NUM B. VII.

*The Deposition of Frances Britten,  
Widow, taken to the Libel.*

1<sup>st</sup> **T**HAT she is Aged about 55 Years, and hath known both the Parties respectively from their Infancy.

2<sup>dly</sup>, That the Deponent having oftentimes Occasion of Business with the Lady *Frances*, hath come to her since her Marriage to the Earl, and hath seen the Earl and her dine and sup together as Man and Wife: That between *Michaelmas* and *All-hollontide* was three Years, this Deponent coming to Lady *Frances's* Lodging at *Hampton-Court* early in the Morning, she was brought into the Bed-chamber, where she did see them in naked Bed together: as likewise she did at Lady *Frances's* Lodging at *White-ball*: That perceiving them in Bed together, this Deponent stept back, but the Lady *Catharine Howard* her Sister being there, called the Deponent in, and then Lady *Frances* stept out of her Bed and left the Earl there: That this was on *St. Valentines's-day*, for that Lady *Catharine* told the Earl, that there was a Valentine  
for



for him. Cannot depose further, saving that when this Deponent was at *Hampton-Court*, as is before mentioned, after the Earl and Lady *Frances* were risen, the Lady missing a Pendant Ruby that usually hung at a Ring in her Ear, desired this Deponent to look for it in the Bed. That thereupon she and the Lady's Chambermaid turned down the Bed-cloaths, and there they saw the Places where the Earl and Lady had lain, but that there was such a distance between the two Places, and such a Hill between them, that this Deponent is persuaded they did not touch one another that Night,





## NUM B. VIII.

*The Judgment of Philip Melancthon, upon Divorces on Account of Impotence.*

PERSONS who are unfit for conjugal Copulation, are by no means Man and Wife, but when the Frigidity is made apparent, a Judge may pronounce those Persons unmarried. Neither is the Divorce then made, because it was never a Marriage according to what is said in *Matth. 19.* But a Declaration only is then made, that others may know, that such a Society of two Persons is not a Marriage; and that the Person who has the Powers of Nature entire, is allowed to enter into another lawful and more happy Union. But the Laws appoint the Time for the Discovery of Frigidity, if the Matter is doubtful, and forbid a Separation for three Years. They give the same Decision upon those whose Constitution is so infeebled by Witchcraft or Charms, as to be incurable by the Help of Physick; if the Success of Medicines have

have been tryed thro' the Course of three Years together without Effect.

But so great is the Modesty of some Women, as to conceal the Impotence of their Husbands; as the Sister of the learned *Simon Gryneus* declared, that she, after the Death of her first Husband, married again a Virgin Widow, who had been wedded eleven Years to an impotent Husband; neither did she ever discover the Cause till after the Death of her Husband. Thus far *Melancthon*, on the Head of Matrimony, which *Pezelius* has inserted in his Explanation of *Melancthon*; and added this Remark to them. Of Impotence, there is one sort natural, and another accidental. The natural is, when by Nature one is incapacitated for conjugal Commixture. Accidental, when he is castrated, or disabled by Witchcraft or Poison. Again, that which arises from evil Arts, either is curable by Medicine, or perpetual. From these Distinctions the Explanation is taken, or the Question, whether and how Impotence is the Cause of a Divorce? For there can be no Marriage between impotent Persons; because the sufficient and final Cause is wanting. For first, the Person potent, was deceived, and married ignorantly an Impotent, and therefore there could be no Consent, which is the efficient Cause of Matrimony. In the second

second Place, the End of Matrimony is double ; one is the Generation of Children, as it is said *increase and multiply* ; the other End is the avoidance of promiscuous Mixture ; according to that Saying, *Let every one marry to avoid Fornication.* this is *Pezelius's* Explication, in his second Part of his Examination of *Melancthon.*



NUMB.



## NUMB. IX.

*The Judgment of Heningius upon  
the same CASE.*

**I**nability of Body for the Use of Matrimony is a Cause of Divorce; and Men are sometimes by Charms and evil Arts so disabled, as to be incurable. But there are more Particulars to be examined by the Judge before he gives Sentence of Divorce. First, whether the Impotence was precedent to the Marriage, Secondly, whether it followed it. If it was precedent, the potent Person may be set at Liberty upon Suit for a Divorce, for it was not a Marriage, since they did not lawfully consent; since one of the Parties deceives, the other was mistaken; the Impotent deceives, the Potent mistakes. Therefore since God neither approves of Deceit nor Error, it is not to be said that he join'd them together. Farther, if the Judge shall find by the Proofs that the Inability is incurable, he shall immediately declare that it was not a Marriage; but if there be any  
Hopes

Hopes of Cure, let three Years be appointed, during which Time the Cure must be patiently expected, which if ineffectual, the Judge shall pronounce it was no Marriage.

If the Defect followed after Marriage, and the conjugal Embraces of the Parties, Divorce is by no means allowable; for an accidental Affliction, if without Fault of the Sufferer, is to be patiently born with in Matrimony. If the one was pre-acquainted with the Infirmary of the other before Marriage, let them be compelled to live together, and perform all other mutual good Offices: For the Person conscious of the other's Defect, without doubt designed a Fraud, which Fraud ought not to be of any Advantage to that Party, if he afterwards sue for a Divorce. Thus *Heningius* in his Treatise of *Marriage* and *Divorce*.

F I N I S.

